

CAZON  
EAB  
-H26



3 1761 116521774



# ENVIRONMENTAL ASSESSMENT BOARD

---

VOLUME: 95

DATE: Thursday, April 27th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman  
E. MARTEL, Member  
A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

**EARR**  
&  
**ASSOCIATES &**  
**REPORTING INC.**

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4



CAZON  
EAB  
-H26



# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 95

DATE: Thursday, April 27th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

**FARR**  
**ASSOCIATES &**  
**REPORTING INC.**

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4



Digitized by the Internet Archive  
in 2023 with funding from  
University of Toronto

<https://archive.org/details/31761116521774>

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----

Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Thursday, April 27th,  
1989, commencing at 8:30 a.m.

-----  
VOLUME 95

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



(i)

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH )	RESOURCES
MS. K. MURPHY )	
MS. Y. HERSCHER )	
MR. B. CAMPBELL )	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY )	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
MR. B.R. ARMSTRONG	ANGLERS & HUNTERS
MR. G.L. FIRMAN	
MR. D. HUNTER	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD )	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. MCKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	



(ii)

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON



(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION



(iv)

I N D E X   O F   P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>DAVID LOWELL EULER,</u> <u>PETER PHILLIP HYNARD,</u> <u>JOHN TRUMAN ALLIN,</u> <u>RICHARD BRUCE GREENDWOOD,</u> <u>CAMERON D. CLARK,</u> <u>GORDON C. OLDFORD, Resumed</u>	15982
Cross-Examination by Ms. Seaborn	15984



(v)

I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
527	MOE Interrogatory Question No. 4, 5, 6, 8, 11, 12, 13, 15, 17 & 19 (Panel 10).	15982
528	Copy of letter dated April 6, 1989 from Ms. Murphy to Ms. Seaborn re: undertakings and interrogatory answers with respect to Panel 8.	15983
529	Excerpt of document entitled: Panel 3 Undertakings, amended on March 8, 1989.	15984



1        ----Upon commencing at 9:08 a.m.

2                    THE CHAIRMAN: Good morning. Be seated,  
3                    please.

4                    Mr. McKibbon?

5                    MR. MCKIBBON: Mr. Hunter asked me to  
6                    apologize to the Board for not being able to proceed  
7                    today. He is dreadfully ill with the flu and simply  
8                    can't proceed.

9                    Arrangements have been made with the  
10                  Ministry of the Environment to go in our place and we  
11                  want to express our thanks to the Ministry and to the  
12                  Board for accommodating us.

13                  Also Mr. Hunter asked me to introduce to  
14                  you Nancy Kleer. Ms. Kleer will be cross-examining  
15                  future panels beginning with Panel 11 for  
16                  Nishnawbe-Aski Nation and Windigo Tribal Council.

17                  Thank you.

18                  THE CHAIRMAN: Thank you, Mr. McKibbon  
19                  and the Board wishes Mr. Hunter a speedy recovery.

20                  Ms. Seaborn, when you are commencing your  
21                  cross-examination today, I take it that you will want  
22                  to proceed uninterrupted.

23                  MS. SEABORN: Yes, Mr. Chairman.

24                  THE CHAIRMAN: So we will continue right  
25                  through with your cross-examination into next week if

1           you don't finish today before we come back to Mr.  
2           Hunter's examination.

3                 I take it -- Is Mr. Hunter going to  
4           conduct this cross-examination or is it Ms. Kleer?

5                 MR. MCKIBBON: Mr. Hunter.

6                 THE CHAIRMAN: Right. Okay.

7                 MS. SEABORN: I am hopeful that I'll  
8           finish today, Mr. Chairman.

9                 THE CHAIRMAN: Okay. Are there any  
10          preliminary matters?

11                 Mr. Freidin?

12                 MR. FREIDIN: Sorry, Mr. Chairman. I  
13          wanted to make some comments about the draft direction  
14          in relation to the moose guidelines that I indicated on  
15          Tuesday that I would make. I have been able to obtain  
16          some information which will hopefully be of assistance.

17                 And the issues again that I would like to  
18          address are the ones which arose on Tuesday regarding  
19          the relationship between Exhibit 310, which are the  
20          moose guidelines, page (ii), the last paragraph on that  
21          page, and Exhibit 489 and, in particular, the last  
22          paragraph on page 3 of that document.

23                 You will recall the portion of 310 that I  
24          am referring to is the section which requires a  
25          Regional Director approval in certain circumstances,

1 and ADM approval in others. And the section of Exhibit  
2 489 that I am referring to was the section which deals  
3 with the reporting requirements of exceeding certain  
4 things by two times, et cetera.

5 Before doing so, before directly dealing  
6 with those paragraphs, I want to indicate that in  
7 normal circumstances Dr. Euler would have been involved  
8 in an ongoing basis with the development of Exhibit 489  
9 and would not have been put in the difficult, and if I  
10 might say, the somewhat unfair position of having to  
11 give his interpretation of what a draft direction meant  
12 without knowing whether, in his absence, a Ministry  
13 interpretation was being considered or in fact had been  
14 developed.

15 THE CHAIRMAN: Well, when you talk about  
16 unfairness, surely that's unfairness perpetrated by the  
17 Ministry upon itself, it has nothing to do with anyone  
18 else?

19 MR. FREIDIN: The timing of it was  
20 unfair.

21 THE CHAIRMAN: Well, so be it, but the  
22 Ministry could have organized it otherwise; could they  
23 not?

24 MR. FREIDIN: Well, I don't believe we  
25 should neither get into that --

1                   THE CHAIRMAN: Well, we are not going to  
2 get into it.

3                   MR. FREIDIN: All right.

4                   THE CHAIRMAN: But when you are  
5 characterizing it as being unfair, it sort of leaves  
6 the impression that somehow somebody has done something  
7 to Dr. Euler that shouldn't have been done and all I  
8 think the Board is indicating is that --

9                   MR. FREIDIN: I am not suggesting that.

10                  THE CHAIRMAN: However, the Ministry  
11 organized this particular document, they did it  
12 themselves and have put Dr. Euler into an embarrassing  
13 position, maybe they shouldn't have done it that way.

14                  MR. FREIDIN: In any event, Mr. Chairman,  
15 as you are aware this panel began in March and has been  
16 under cross-examination since April the 4th and that  
17 has had an effect on my ability or anyone's ability to  
18 speak to Dr. Euler about that particular evidence.

19                  Now, having made those introductory  
20 comments I would like to advise you that the Ministry's  
21 position on the relationship between Exhibit 489 and  
22 Exhibit 310 is as follows:

23                  That Exhibit 489 does not supersede the  
24 direction provided in the last paragraph on page (ii)  
25 of Exhibit 310. It is the Ministry's view that the

1       paragraph of Exhibit 489 which gave rise to the line of  
2       questioning on Tuesday merely provides guidance as to  
3       when, in relation to proposed harvest and for the  
4       purposes of that guideline, proposed cuts will be  
5       regarded as exceeding the guidelines over large areas.  
6       Those are the words used in the guidelines.

7                     The consequence of that situation  
8       occurring is a requirement for certain documentation  
9       and Regional Director approval and the direction merely  
10      provides more certainty as to when those requirements  
11      come into play.

12                  In addition, it is the Ministry's  
13      position that the direction in the last paragraph of  
14      Exhibit 489 relates to the harvest activity or the  
15      proposed cuts only and that is to the extent that the  
16      last paragraph of Exhibit 310 addresses anything beyond  
17      harvest cuts, Exhibit 489 is silent.

18                  The Ministry believes that such  
19      procedural direction is clearly within the intent of  
20      the guidelines and is not an amendment of them. And if  
21      I might in that regard, I think the Ministry can  
22      confirm the evidence of Dr. Euler in Volume 83 at page  
23      13967 where he stated that in relation to the section  
24      of - we were talking about Exhibit 489 - it isn't going  
25      to change the intent of the guidelines and it may not

1 change the application of the guidelines - by that I  
2 take results on the ground - but what it will change is  
3 a more stringent reporting and documentation of when  
4 the guidelines are exceeded. And then he goes on.

5 Now, the second sentence -- that last  
6 paragraph of the guidelines was broken up into two  
7 sentences and the last sentence on page (ii) which was  
8 discussed describes a requirement to obtain ADM  
9 approval:

10 "...where a region intends to..."  
11 - and I am quoting -

12 "...routinely sanction deviation from the  
13 guidelines."

14 Discussion on Tuesday revolved around  
15 such a requirement where the region intended to  
16 routinely sanction deviation from the direction  
17 provided in the area of concern portion of the  
18 guidelines.

19 As you are aware, Mr. Chairman, in Panel  
20 15 we will be describing the area of concern planning  
21 process. You have heard a fair bit about that already  
22 and as a result are aware that for each area of concern  
23 there is a requirement to explain why normal operations  
24 can be followed in that area of concern if that in fact  
25 is the decision which is ultimately made, or provide

1       the reason that modified operations or a reserve is the  
2       preferred method of protecting the value which gave  
3       rise to the creation of an area of concern in the first  
4       place.

5                   There is no description nor was one  
6       necessarily contemplated of a precise method of  
7       obtaining the ADM's approval. And I can advise you  
8       that based on Tuesday's discussion, the Ministry will  
9       consider providing more explicit direction in that  
10      regard and will address that issue in Panel No. 15.

11                  Thank you, Mr. Chairman.

12                  THE CHAIRMAN: Thank you.

13                  Mr. Tuer?

14                  MR. TUER: Well, Mr. Chairman, so far as  
15       I am concerned what Mr. Freidin has just done is  
16       present the Board with evidence. I am not at this  
17       moment in a position to comment on that evidence nor  
18       the implications flowing from it.

19                  We have had a lot of discussion about the  
20       two sections referred to by Mr. Freidin and commented  
21       on by Mr. Freidin and I am certainly not conceding that  
22       Mr. Freidin's remarks put that matter to bed, if  
23       anything, to my mind at least, it adds more confusion  
24       to what the Ministry is really saying.

25                  And this is a matter of grave concern to

1 my clients who are trying to comply with the  
2 requirements of the MNR and that's not something that  
3 is in the future, that is something that is present  
4 today, tomorrow and every day thereafter and if the MNR  
5 is now postulating a further position on what the  
6 guidelines mean and what the subsequent directive  
7 means, I think that -- I submit that that further  
8 position should be set out in writing and somebody  
9 should be made available at this hearing to explain it  
10 if explanations are necessary.

11 THE CHAIRMAN: Well, we can handle it in  
12 one of two ways. I think the Board, Mr. Tuer, is in  
13 agreement with your submission that the parties should  
14 have an opportunity to both consider at some length the  
15 position, if that is the total position of the Ministry  
16 put forward by Mr. Freidin, but more importantly have  
17 an opportunity to discuss it and question it and  
18 cross-examine somebody on it because there may be  
19 implications that flow from that policy that should not  
20 forestall other parties being able to address.

21 Now, procedurally it is a matter of when  
22 we arrange to do that and if this is going to be dealt  
23 with again in Panel 15, perhaps the Ministry could  
24 clearly put its position forward in writing on that  
25 particular point by way of an amendment to perhaps the

1       Panel 15 witness statement or something like that, or a  
2       separate document and then the parties would have an  
3       opportunity at that time to deal with it.

4                   I don't know if now is necessarily the  
5       time that we have to deal with it.

6                   MR. TUER: I don't have any -- normally I  
7       would have no problem with that whatsoever, but I am  
8       told by my clients' representatives that these  
9       so-called directives are now in the field. And what do  
10      they mean?

11                  THE CHAIRMAN: So your concern is, is  
12      that these are being applied right now?

13                  MR. TUER: In some fashion or another  
14      they are out in the field.

15                  THE CHAIRMAN: And that if there is some  
16      confusion, that the Ministry is going to clarify as to  
17      their application, it would help your clients deal with  
18      that and anybody else at this point in time forward.

19                  MR. TUER: That's what my  
20      cross-examination was directed to. My  
21      cross-examination was directed to trying to clarify the  
22      matter so that those in the field would know what they  
23      are supposed to do.

24                  MR. FREIDIN: Well, Mr. Chairman, I agree  
25      with Mr. Tuer that he should have the opportunity to

1 question on these things. I think if I have an  
2 opportunity to speak to him, we can make an arrangement  
3 as to when that is probably most satisfactory to him.  
4 There certainly are other -- there are witnesses in the  
5 following panels that are going to deal with this.

6 THE CHAIRMAN: Well, perhaps though, Mr.  
7 Freidin, if you are conferring with the senior  
8 officials of the Ministry as to what the Ministry's  
9 position is and you've just enunciated what it is to  
10 the Board, perhaps if you produced a short document  
11 outlining clearly what that position is and we dealt  
12 with it perhaps in the panel after the  
13 cross-examination is completed of, say -- I was going  
14 to say Mr. Hunter, but then Mr. Hunter may want to deal  
15 with that himself and we just have to allow him a  
16 further opportunity.

17 MR. FREIDIN: I have no objection to that  
18 as long as I can speak to Dr. Euler who hasn't been  
19 involved --

20 THE CHAIRMAN: Well, I don't think any of  
21 the parties would object, provided your discussion with  
22 Dr. Euler is confined to this particular issue.

23 Does any party have any objection to  
24 that?

25 MR. TUER: I have no objection to that.

1                   THE CHAIRMAN: And then any of the  
2 parties that have preceded that discussion would have a  
3 further opportunity to enter the discussion on this one  
4 issue, that would apply to the parties who have  
5 previously examined this panel.

6                   And I take it, Mr. Freidin, would you be  
7 suggesting that Dr. Euler would be the one who would be  
8 in a position to discuss it for the Ministry after the  
9 Ministry has formulated its position and you've had  
10 discussions with Dr. Euler on this?

11                  MR. FREIDIN: Dr. Euler would be who I  
12 would be suggesting to deal with it and when you ask  
13 about -- I think the written material that will be  
14 received will be similar -- quite similar to the  
15 statements that I had made, so just so people know.

16                  THE CHAIRMAN: Well, I'm just saying --,  
17 I mean, it's in the transcript, but I am saying to you  
18 if you want to reconsider and put forward a position  
19 that goes beyond what you've said in the statement  
20 that's now on the record, that can be adopted by Dr.  
21 Euler or anybody from the Ministry, then you could do  
22 it in that fashion.

23                  See, Mr. Tuer, if they are not going to  
24 change their position essentially from what Mr. Freidin  
25 has already put on the record, it seems to me that that

1       could be adopted by the Ministry through one of their  
2       witnesses and then cross-examined on it.

3                    MR. TUER: That's fine, Mr. Chairman,  
4       except that I heard this morning that Dr. Euler was  
5       questioned about these matters and Dr. Euler, through  
6       no fault of his own, was not knowledgeable about the  
7       matters and the real position was this, thus and so as  
8       Mr. Freidin has just explained it from some  
9       unidentified, omnipotent power beyond Dr. Euler, and it  
10      seems to me that if any further discussion about this  
11      matter is going to have any meaningful result at all,  
12      someone has got to be put forward who can tell us what  
13      the real policy is.

14                  THE CHAIRMAN: Well, I'm saying that that  
15      is true, but in these discussions that Dr. Freidin  
16      would have with Dr. Euler - and obviously Mr. Freidin  
17      will be discussing it with other Ministry officials -  
18      their official position might be agreed upon, it may be  
19      the same as what was put on the record today, Dr. Euler  
20      could adopt that as the official position of the  
21      Ministry and you could question Dr. Euler on it.

22                  If Mr. Freidin on the other hand feels  
23      that another official from the Ministry is necessary to  
24      put into the stand for the purposes of this one issue,  
25      then that could be done as well.

1                   MR. TUER: Well, I am quite prepared to  
2 go forward on that basis, but I am certainly going to  
3 reserve my right to require further information or  
4 answers from someone who is not, as it appears Dr.  
5 Euler is going to be, a mere cipher for somebody else.

6                   I am not so sure how valuable that  
7 process is going to be unless the people who can  
8 identify the reasons for the policy and so forth are  
9 going to be available.

10                  THE CHAIRMAN: Well, Mr. Freidin, you  
11 might consider who you would want on behalf of the  
12 Ministry to address these issues, because it did arise  
13 in the evidence, it is a situation that the Board  
14 identified as well as other parties as perhaps at least  
15 ambiguous in terms of its application, and the Ministry  
16 is trying to clarify it.

17                  In trying to clarify it, the other  
18 parties should have an opportunity to question the  
19 Ministry as to the application of these documents.

20                  Ms. Seaborn?

21                  MS. SEABORN: Just two comments, Mr.  
22 Chairman.

23                  First of all, as I recall this interim  
24 reporting direction issue did come back up by Dr. Euler  
25 in-chief and when we got into the difficulty was when

1           it was reduced to writing, and that was the request I  
2       believe from Ms. Swenarchuk. So I think to say that  
3       Dr. Euler has no knowledge or information about this  
4       issue is clearly wrong. I mean, this was put in in his  
5       direct evidence as Mr. Freidin asked him about.

6           The second thing is Mr. Tuer is concerned  
7       about what's going on in the field. At a hearing like  
8       this that is, you know, over a long period of time  
9       there may be a number of things that are brought up in  
10      this hearing and may or may not result in operating  
11      changes in the field, we just don't know. And I am not  
12      quite sure how this issue is any different from a  
13      number of other issues that may be brought up by  
14      parties. Clearly there is some confusion on the moose  
15      guidelines and I intend to ask some questions on them  
16      as well today.

17           I have a little bit of difficulty in us  
18      getting in a situation where we are, at this stage,  
19      going to call yet another witness to put in new  
20      evidence. Mr. Hanna has already completed his  
21      cross-examination and as has Ms. Swenarchuk and I am  
22      not sure how profitable it's going to be.

23           It appears to me the remarks Mr. Freidin  
24      put on the record were very consistent with Dr. Euler's  
25      evidence-in-chief and if the cross-examination muddied

1       the waters, well so be it, that is what often happens  
2       when parties cross-examine and Mr. Freidin has a chance  
3       at his cross-examination.

4                     THE CHAIRMAN: Well, with respect, Ms.  
5       Seaborn, I am not sure the Board agrees. This is an  
6       issue that is a relatively important issue in the  
7       context of this panel's evidence and certain things  
8       arose in the previous cross-examinations which the  
9       Ministry is now seeking to clarify. And I think in  
10      fairness to the parties they should have the  
11      opportunity to further question that clarification and  
12      if parties have already previously gone and were not  
13      privy to this clarification, such as Ms. Swenarchuk and  
14      Mr. Hanna, they should also have that opportunity.

15                   MS. SEABORN: I certainly agree with  
16      that, Mr. Chairman.

17                   THE CHAIRMAN: And as to whether we  
18      should deal with it now or deal with it later, it was  
19      part of this panel's evidence - granted in this case  
20      there are overlaps of many of the panels' evidence -  
21      and we could, I suppose, wait until Panel 15, but  
22      perhaps it would be in the interest of everyone to have  
23      this clarified now, particularly when Dr. Euler is a  
24      member of this panel and he won't be back or may not be  
25      back in a future panel.

1                   As far as any other witness being called  
2 just to deal specifically with this issue, that in  
3 itself would not necessarily pose a problem because  
4 that witness would be confined solely to this issue.

5                   You would not be allowed, Mr. Freidin, if  
6 you were going to call somebody to deal with it, to  
7 have that witness address any other issue. You chose  
8 to present the evidence in this panel through these  
9 people and they will be confined to that.

10                  MR. FREIDIN: And rest assured that I  
11 wouldn't do that.

12                  THE CHAIRMAN: Well, I think perhaps we  
13 will wait until the end of your cross-examination and  
14 perhaps we might deal with this -- I was going to say  
15 deal with this before Mr. Hunter starts next week, but  
16 that may not give the other parties an opportunity to  
17 consider it and be present for that either. Perhaps it  
18 should be held off a bit further than that.

19                  When could you have this addressed, Mr.  
20 Freidin, or are you going to rely on what you've just  
21 said?

22                  MR. FREIDIN: I don't know. I didn't  
23 anticipate quite the response that I got. I would have  
24 to consider whether in fact, in light of the  
25 circumstances, I wanted to perhaps say more than what

1 has already been said.

12 So I think it would be better really if  
13 you attempted to get whatever your position is on the  
14 record early Monday so the parties would have an  
15 opportunity to consider it and maybe we could deal with  
16 this at the end of this panel.

17 MR. TUER: Wednesday, fine.

18 MR. FREIDIN: And if I just might add,  
19 Mr. Chairman, you know, I sort of echo the words of Ms.  
20 Seaborn about there are things ongoing all the time.  
21 The Board has from time to time asked for clarification  
22 of what is going on at the present time although they  
23 may be matters that are in negotiation or in draft and,  
24 in some respects, I think it is unfortunate that  
25 circumstances have led us to this point, but that's

1 where we are and we'll deal with it in the fashion that  
2 you have indicated.

3 THE CHAIRMAN: Okay. Ms. Seaborn, are  
4 you ready?

5 MS. SEABORN: Yes, Mr. Chairman. Thank  
6 you.

7 DAVID LOWELL EULER,  
8 PETER PHILLIP HYNARD,  
9 JOHN TRUMAN ALLIN,  
RICHARD BRUCE GREENWOOD,  
CAMERON D. CLARK,  
GORDON C. OLDFORD, Resumed  
10

11 MS. SEABORN: Good morning, panel.

12 DR. EULER: Good morning.

13 MS. SEABORN: I would like to start off,  
14 Mr. Chairman, by introducing a couple of exhibits. The  
15 first exhibit is a package of the interrogatories filed  
16 by the Ministry of Environment pertaining to Panel 10.  
17 I have only included in the package those  
18 interrogatories that have not been filed to date and I  
19 suggest we give the package one number.

20 THE CHAIRMAN: Exhibit 527.

21 MS. SEABORN: And for the record they  
22 are: MOE Questions 4, 5, 6, 8, 11, 12, 13, 15, 17 and  
23 19. (handed)

24 ---EXHIBIT NO. 527: MOE Interrogatory Question No.  
25 4, 5, 6, 8, 11, 12, 13, 15, 17 &  
19 (Panel 10).

1                   THE CHAIRMAN: Thank you.

2                   MS. SEABORN: The second matter, Mr.  
3                   Chairman, is a copy of a letter dated April 6, 1989  
4                   from Kate Murphy to myself answering a number of  
5                   outstanding undertakings and some interrogatory answers  
6                   that we had requested from Panel 8.

7                   I am filing this at the moment just so  
8                   the material is on the record. I have numbered the  
9                   pages, it is quite a large package, and I will not be  
10                  referring to it today, but we may come back to this  
11                  exhibit at a later date. So if we could give the  
12                  package a number.

13                  THE CHAIRMAN: Exhibit 528.

14                  MS. SEABORN: (handed)

15                  THE CHAIRMAN: Thank you.

16                  ---EXHIBIT NO. 528: Copy of letter dated April 6, 1989  
17                  from Ms. Murphy to Ms. Seaborn re:  
18                  undertakings and interrogatory  
19                  answers with respect to Panel 8.

20                  MS. SEABORN: And, Mr. Chairman, I  
21                  believe that letter was provided to all parties  
22                  receiving full-time correspondence.

23                  The last filing I have is a response to  
24                  an undertaking arising from a question that I asked Dr.  
25                  Osborn in Panel 3 and this document is entitled: Panel  
                      3 Undertakings, amended on March 8, 1989. This again

1       was provided to all parties under cover of a letter  
2       from Ms. Murphy and enclosing in that letter were a  
3       number of undertaking answers and what I have done is  
4       taken out this particular answer because I will be  
5       referring to it during my cross-examination.

6                     And, Mr. Hynard, perhaps you could have a  
7       look at the answer over the break.

8                     THE CHAIRMAN: Exhibit 529.

9                     MS. SEABORN: (handed)

10                    THE CHAIRMAN: Thank you.

11                    ---EXHIBIT NO. 529: Excerpt of document entitled:  
12                                     Panel 3 Undertakings, amended on  
                                   March 8, 1989.

13                    CROSS-EXAMINATION BY MS. SEABORN:

14                    Q. Dr. Allin, MNR has a mandate to  
15       protect fish habitat and my client, the Minister of the  
16       Environment, has a mandate to protect water quality;  
17       correct?

18                    DR. ALLIN: A. Correct.

19                    Q. Although fish habitat and water  
20       quality are intrinsically related, they are regulated  
21       by different legislation; aren't they?

22                    A. Yes, they are.

23                    Q. And through a collaborative effort  
24       between the ministries, the Fish Habitat Guidelines  
25       were developed to protect both water quality and fish

1           habitat?

2           A. That's correct.

3           Q. Could you just turn to page 1 of the  
4           Fish Habitat Guidelines which is Exhibit 303. It is  
5           actually page (i).

6           MR. FREIDIN: The preface.

7           DR. ALLIN: Yes, I have it.

8           MS. SEABORN: Q. If you look at the  
9           second sentence it says:

10            "The guidelines were developed on a  
11            biological basis for the purpose of  
12            protecting fish habitat and water  
13            quality." Do you see that?

14           DR. ALLIN: A. Yes, I do.

15           Q. Now, in your direct testimony you say  
16           that the guidelines were conservative. Do you recall  
17           that?

18           A. Yes, I do.

19           Q. And am I correct that when you say  
20           that the guidelines are conservative, you mean that  
21           they are scientifically or biologically conservative;  
22           correct?

23           A. Yes.

24           Q. And the guidelines were not  
25           conservative in the sense that they increase reserves

1 and place greater restriction on harvest operations;  
2 would you agree with that?

3 A. I am not quite sure what you mean.

4 Would you please rephrase that?

5 Q. Sure. When you say that the  
6 guidelines are conservative, you were not using the  
7 word conservative in the sense that they take more  
8 timber out of production than was previously the case.  
9 That's not the intent of it; was it?

10 A. No, that's correct.

11 Q. And could you have a look at the  
12 Panel 1 witness statement. Do you have that?

13 MS. SEABORN: And, Mr. Chairman, the  
14 Board should have that in front of them. I asked Mr.  
15 Mander to provide you with it, it is at page 212.

16 THE CHAIRMAN: Exhibit 6?

17 MS. SEABORN: Yes. Thank you, Mr.  
18 Chairman.

19 Q. Do you have that in front of you?  
20 And actually -- I'm sorry, it is page 242, and that  
21 document is called A Policy for the Integration of  
22 Other Resource Values in Timber Management.

23 DR. ALLIN: A. Yes.

24 Q. Now, under rationale, it says that:  
25 "In the past, reserves were established

1 (notably along shorelines and travel  
2 corridors) to accommodate other resource  
3 values such as fisheries, wildlife  
4 habitat and scenic views. Within these  
5 reserves normally no timber management  
6 operations were permitted. The net  
7 effect of this approach was that reserves  
8 tied up merchantable timber and did not  
9 always provide appropriate solutions for  
10 the protection of management of other  
11 resource values."

12 And then underneath the Intent Section,  
13 one of the intents that is identified in this policy  
14 under (i) is:

15 "To increase the amount of timber  
16 available by providing opportunities for  
17 timber management operations in areas  
18 previously identified as reserves."

19 Correct?

20 A. Yes.

21 Q. And that could be called the former  
22 approach which was the doughnut approach. And then you  
23 developed this policy to try and get away from the  
24 doughnut approach; is that correct?

25 A. I would say that the basic objectives

1 for developing the current Fish Habitat Guidelines are  
2 based largely on the rationale that is expressed here  
3 under intent, yes.

4 Q. Thank you. And I was interested in  
5 looking at your training message on the guidelines  
6 which is Exhibit 492. And if you could turn to page 3  
7 of the training message for the fish guidelines.

8 A. Yes, I have them.

9 Q. And the issue that is identified in  
10 the training message is that many companies and  
11 districts are encouraging the 60 or 90 metre doughnut  
12 approach. Do you see that?

13 A. Yes, I do.

14 Q. And your training message or response  
15 is to the effect that if timber is lost due to  
16 application of the doughnut approach, this is not  
17 something that has been imposed on the industry by MNR?

18 A. Yes, that's the way I read it.

19 Q. And would it be fair to say that the  
20 message you were trying to get across in this document  
21 is that if there is a loss of timber to the industry,  
22 then that loss is not as a result of them having to  
23 comply with the guidelines?

24 A. That's correct. If the loss results  
25 from the use of the doughnut approach.

1                   Q. That's right. Because what you have  
2         tried to do in the guidelines is have a more flexible  
3         approach?

4                   A. That's right, to get away from  
5         standard dougnuts.

6                   Q. That's right. Now, with respect to  
7         the policy that I just looked at that was contained in  
8         the Panel 1 witness statement, I think the Board has  
9         heard evidence through earlier witnesses that this  
10       policy has now been superseded by the area of concern  
11       planning process. Are you aware of that?

12                  A. I am not aware of the evidence that  
13         was given on that point.

14                  Q. Are you aware of that fact?

15                  A. I believe it's true.

16                  Q. Can any of the other panel members  
17         confirm that for me?

18                  MR. FREIDIN: I can confirm that it has  
19         been rescinded.

20                  MS. SEABORN: Q. And I take it that the  
21         spirit of that policy remains intact through  
22         application of the area of concern planning process?

23                  DR. ALLIN: A. Yes, it does.

24                  Q. Dr. Allin, could you just have a look  
25         at the Moose Guidelines for a moment, Exhibit 310 and,

1       in particular, could you turn to page 15 which is a  
2       map. Do you have that in front of you?

3                  A. Yes, I do.

4                  Q. Would you confirm for me that both  
5       Spear's Lake and Watershed Lake provide lake trout  
6       habitat?

7                  A. I simply don't know.

8                  Q. If you look at page 14, Dr. Allin,  
9       under solutions it refers to 120-metre area of concern  
10      is required around lake trout lakes. I had taken that  
11      to tell me that this is a lake trout lake.

12                 A. Yes, and I see in the first paragraph  
13      under site it indicates that in fact both lakes do  
14      provide habitat for lake trout.

15                 Q. Now, if we look at the map on page  
16      15, the application of the guidelines in this example  
17      has led to a shoreline reserve in three associated  
18      corridors; correct?

19                 A. Yes.

20                 Q. And Dr. Euler, it is not unusual to  
21      find moose along a shoreline corridor such as that; is  
22      it?

23                 DR. EULER: A. No, it's not unusual.

24                 Q. Now, Dr. Allin, the example that is  
25      in the moose guidelines refers to application of these

1 guidelines. Would you agree with me that if we applied  
2 the fish guidelines to these lakes that a shoreline  
3 reserve would be required on these lakes for fish  
4 habitat purposes?

5 DR. ALLIN: A. Yes, it would.

6 Q. And if you go back to page 14, under  
7 solutions, in the last line it stipulates that after  
8 ten years when the cuts have regenerated the corridors  
9 can be cut?

10 A. Yes.

11 Q. And Dr. Euler, would you agree that  
12 this is really the same thing as saying that if late  
13 winter habitat is adequate a return cut can occur when  
14 regeneration reaches two metres?

15 DR. EULER: A. Yes, I think so.

16 Q. Now, Dr. Allin, if these two lakes on  
17 page 15 were warm water lakes, then pursuant to the  
18 fish guidelines 50 per cent of the shoreline reserve  
19 would not be -- sorry, 50 per cent of the shoreline  
20 reserve could be cut in the return cut; correct?

21 And I am assuming -- let's just take as  
22 an example these are warm water lakes.

23 DR. ALLIN: A. Yes.

24 Q. Under application of the Fish Habitat  
25 Guidelines you could go in and cut 50 per cent on the

1           return cut?

2                   A. It would be -- the option is there to  
3        return and cut up to 50 per cent. That would be a  
4        maximum figure and depending on the location of  
5        critical fish habitats, it might or might not be  
6        possible to do that.

7                   Q. Okay. Now, Mr. Clark, suppose in  
8        this example we had some tourism concerns around these  
9        lakes. Now, in the example I just went through with  
10      Dr. Allin you could have the same result by applying  
11      the 50 per cent reserve chevron cuts; would you agree  
12      with that?

13                  MR. CLARK: A. Yes, possibly.

14                  Q. And, Dr. Allin, if we have a  
15      hypothetical situation like the one I have just gone  
16      through where we have three sets of guidelines that  
17      could apply to lakes, there is no question in terms of  
18      adding up the reserves, the reserves are not cumulative  
19      in the sense that you create a reserve for fish  
20      purposes, for moose purposes and perhaps for tourism  
21      purposes and that doesn't mean your reserves get any  
22      bigger?

23                  DR. ALLIN: A. No, it doesn't. Where  
24      reserves would overlap in the case of applying more  
25      than one set of guidelines, normally the more stringent

1       prescription would apply.

2                     Q. Okay. Now, Dr. Allin, I don't  
3       believe there's a stipulation in the Fish Habitat  
4       Guidelines as to when you do a return cut around warm  
5       water lakes?

6                     A. No, that's correct.

7                     Q. Would it make sense to you to have  
8       that return cut correspond to the direction given in  
9       the moose guidelines; that is, to cut the leave blocks  
10      in accordance with the two metre and six metre  
11      requirements?

12                  A. That would be one acceptable option I  
13      believe. This is, I would add, a draft training  
14      message on that point.

15                  Q. That is just what I was looking to.  
16      Now, you said that that would be one acceptable option.  
17      In looking at the draft training message, it appears to  
18      me that that is the direction where you are heading at  
19      the moment?

20                  A. Yes, that is the basic approach I  
21      believe that is suggested in the training message.

22                  Q. Thank you.

23                  MR. TUER: Which page?

24                  MS. SEABORN: Page 4 underneath the fish  
25      guidelines.

1                   MS. SEABORN: And the training message is  
2                   Exhibit 492. Mr. Chairman, it's with some trepidation  
3                   that I move into the area of the moose guidelines, I  
4                   must say.

5                   I have tried, Mr. Chairman, in light of  
6                   all the conversation and discussion that has gone on  
7                   about the moose guidelines to be as specific as  
8                   possible, and I am going to attempt not to cover ground  
9                   that has been covered and maybe we can even clarify  
10                  some of these matters this morning.

11                  DR. EULER: I feel the same trepidation.  
12                  MS. SEABORN: I am sure you do, Dr.  
13                  Euler.

14                  THE CHAIRMAN: I suppose it is the Board  
15                  as being the only party that approaches these without  
16                  any fear whatsoever.

17                  MS. SEABORN: Q. Okay. Dr. Euler, in  
18                  thinking about this matter over the last week I have  
19                  tried to summarize in about five points where I see the  
20                  situation notwithstanding with the moose guidelines.

21                  Now, your testimony has been first that  
22                  MNR's current moose population target on a  
23                  provincial-wide basis is 160,000 moose for the year  
24                  2000; correct?

25                  DR. EULER: A. Yes.

1                   Q. And that target is a quantitative  
2 target; correct?

3                   A. Yes, that's right.

4                   Q. And in terms of management  
5 objectives, your objective with respect to moose is to  
6 reach that population target by the year 2000?

7                   A. Yes.

8                   Q. And in your testimony you have told  
9 us that in order to meet your objective you need to  
10 control both moose habitat and the hunters?

11                  A. That's right.

12                  Q. Your evidence has also been that  
13 moose is a featured species and that implementation of  
14 the guidelines will provide habitat for approximately  
15 70 per cent of all vertebrate species?

16                  A. Yes, in the area of the undertaking,  
17 yes.

18                  Q. Yes. And the last point - and this  
19 is something that we have heard from earlier panels and  
20 from yourself - is that the application of the  
21 guidelines is mandatory?

22                  A. Yes.

23                  Q. Okay. Now, with those statements in  
24 mind as given facts, I am going to ask you a few  
25 questions on where we go with those premises in mind.

1                   First of all, Dr. Euler, the selective  
2 harvest program for moose operates across the area of  
3 the undertaking; correct?

4                   A. Yes.

5                   Q. And to put it another way, there is  
6 going to be a moose hunt this season in every timber  
7 management unit across the area of the undertaking?

8                   A. See, I can't guarantee in every  
9 single management unit; most of them, certainly. There  
10 may be some units somewhere, for example the Chapleau  
11 Crown Game Preserve doesn't have hunting but it would  
12 have some timber management units. So in those units  
13 there wouldn't be any hunting.

14                  Q. Okay.

15                  A. So there would be that exception to  
16 the generalization that you made.

17                  Q. But, as a general rule, if we look at  
18 the area of the undertaking that we are dealing with in  
19 this Class Environmental Assessment there is also a  
20 moose hunt pretty well across that whole geographical  
21 area?

22                  A. Yes, in general, with a few  
23 exceptions.

24                  Q. And each year, because of the  
25 selective harvest program you know the number of tags

1 you have issued and you can, and in the past you have,  
2 evaluated whether or not you are meeting your  
3 objectives with respect to a population target based on  
4 the number of tags that are issued?

5 A. That's -- the number of tags, yes, is  
6 a very important part of that process.

7 Q. And that is a quantitative  
8 calculation?

9 A. That's right, yes.

10 Q. And that is something that is quite  
11 easy to do?

12 A. Well, let's not call it easy. It's a  
13 difficult job but it's feasible and is done.

14 Q. And it's something you do now?

15 A. Yes.

16 Q. And you have also said in your  
17 evidence that you have been very tough on hunters and I  
18 think you replied to Mr. Martel's enquiry on this issue  
19 that you have taken a fair amount of criticism for your  
20 selective harvest program?

21 A. Yes. Well, not so much for the  
22 selective harvest program itself because there is a lot  
23 of support for that, but we have taken criticism over  
24 the distribution of the tags, how they were  
25 distributed, the fact that certain individuals didn't

1 get them when they thought they should get them, and so  
2 on.

3 Q. And you have also told us that the  
4 herd is increasing, it has been doing better since the  
5 late 70s, early 80s?

6 A. Yes.

7 Q. And because of the focus in the 80s  
8 being on the issuance of moose tags, I believe you have  
9 told us as well that you are now trying to focus more  
10 on providing good habitat to reach your population  
11 target?

12 A. That's right.

13 MS. SEABORN: Now, just before I leave  
14 the topic of the moose hunt, I am advised by Mr.  
15 Sutterfield that the deadline is fast approaching for  
16 him to get his moose tag and put his name in the  
17 lottery for next fall. And it seems to be paramount to  
18 Mr. Sutterfield at the moment as to when the Board is  
19 going to sit in October so he can plan his week of  
20 moose hunting.

21 So if the Board would keep that in mind,  
22 it would keep my work...

23 MR. MARTEL: He might not get a tag.

24 DR. EULER: I don't think he would  
25 criticize though if he didn't.

1                   THE CHAIRMAN: Might be looked upon as  
2 favourtism, so perhaps you should not issue him a tag.

3                   DR. EULER: We will think about that, Mr.  
4 Chairman.

5                   MS. SEABORN: Q. Could you turn, Dr.  
6 Euler, to Exhibit 499 which is your paper on how  
7 clearcutting affects wildlife management. And if you  
8 could turn to page 18. Do you have that, Dr. Euler?

9                   DR. EULER: A. Yes, I have it here. My  
10 index system -- my library card system has just failed  
11 me temporarily, but I will have it. It is here, I saw  
12 it earlier.

13                   Q. That is fine.

14                   MR. FREIDIN: If there's anybody who can  
15 give me any help in that regard, it would be most  
16 welcome.

17                   THE CHAIRMAN: Hanging on to documents  
18 seems to be a problem over the last couple of days.

19                   DR. EULER: I don't know happened  
20 happened to it, I had it here earlier. I am afraid I  
21 am going to have to borrow a copy. I am sorry, Mr.  
22 Chairman.

23                   MS. SEABORN: Q. And if you could turn  
24 to page 18.

25                   DR. EULER: A. Yes, I have page 18.

1                   Q. Now, do you see the paragraph  
2                   underneath Table 1?

3                   A. Yes, I do.

4                   Q. Okay. Partway through the paragraph,  
5                   the sentence that starts with 'improved'. Do you see  
6                   that?

7                   A. Yes, I do.

8                   Q. Now, you stated in your paper that:  
9                   "Improved control over the hunter kill is  
10                  now being undertaken and road access is  
11                  being studied to identify how it affects  
12                  moose kill. As these factors are  
13                  controlled more effectively, habitat will  
14                  probably become the major limiting factor  
15                  in the future."

16                  A. Yes.

17                  Q. I have forgotten, Dr. Euler, when was  
18                  this paper prepared?

19                  A. Well, I forgot too, but it's about  
20                  1975.

21                  Q. I don't recall the date. Okay.

22                  A. It's noted in my curriculum vitae  
23                  with the date and I have just forgotten. It's  
24                  approximately 1975.

25                  Q. That is fine. Now, one of the

1 messages, Dr. Euler, you have said in your evidence  
2 that you wanted to leave with the Board was that you  
3 have said that MNR wants to be judged by whether or not  
4 you were achieving your moose objectives.

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. Now, if good habitat and hunting  
9 controls go hand-in-hand in achieving that moose  
10 population target and in achieving that objective, then  
11 evaluating the extent to which you are providing good  
12 habitat is required; would you agree?

13 A. See, I am not sure that we need to do  
14 that in an explicit way because what is really  
15 important I think is how well we are attaining our  
16 moose objective and there are some ranges within which  
17 we can do that, some ranges of habitat quality and some  
18 ranges of hunter control.

19 THE CHAIRMAN: Excuse me a moment but,  
20 Dr. Euler, if you have only got sort of a quantitative  
21 handle on the one side, the hunter control side, wasn't  
22 part of the point of Mr. Hanna's cross-examination  
23 yesterday as well that if you are providing more  
24 habitat that would increase the moose population and by  
25 virtue of that factor you might then be able to up the

1       kill in terms of numbers and still maintain your  
2       target?

3                     DR. EULER: Yes, that was clearly his  
4       point, yes.

5                     THE CHAIRMAN: You can't really feel  
6       confident about adjusting necessarily the moose kill  
7       side if you don't have the appropriate handle on what  
8       contribution to the total picture the habitat side is?

9                     DR. EULER: Well, see, that is why I went  
10      back to the analogy of the two six guns. You see, the  
11      knowledge is there to know exactly what the habitat is  
12      but it's very costly to get that information. We can  
13      get it, it's just how much is it going to cost and is  
14      it worth the cost.

15                   Now, we know the moose herd is  
16      increasing. We are doing two things: We are  
17      controlling kill by hunters and we are working on the  
18      habitat, and we are just not sure which of those  
19      activities we are engaged in is contributing most to  
20      the increase.

21                   MS. SEABORN: Q. Well, Dr. Euler, I  
22      don't want to interrupt you, but that is precisely my  
23      point. If you want to be judged by your objective and  
24      your objective is a population target number and you  
25      say that there are two ways of achieving your

1       objective, limiting hunters -- manipulating hunting  
2       restrictions and providing habitat; if you can monitor  
3       the hunting side of it, don't you need to make sure  
4       that you evaluate, in some meaningful way, how you are  
5       doing with providing the moose habitat?

6                  I am not suggesting any elaborate  
7       structure, I am just saying that on a theoretical level  
8       doesn't it make sense to somehow evaluate how you are  
9       doing in providing habitat?

10                 DR. EULER: A. Well, sure. If you will  
11       allow me to be very broad and general in how we  
12       evaluate habitat, yes, then under that circumstance we  
13       do evaluate habitat now, we do it in a broad brush way.

14                 I can't show you how we have documented  
15       this in every case, but each of our staff would be  
16       constantly evaluating habitat and comparing it to this  
17       ideal that we have over here and making that kind of  
18       judgment as a routine part of their duties.

19                 Q. And one of the ways of evaluating the  
20       habitat, wouldn't that be in a review of a timber  
21       management plan?

22                 A. Oh yes, sure.

23                 Q. Okay. And when you have a look at a  
24       timber management plan, you would have an idea as to  
25       the extent to which these habitat guidelines are being

1 applied and you could tell how you were doing on the  
2 habitat side?

3 A. Oh yes, mm-hmm.

4 Q. Okay. And if you have got a hunt  
5 across the area of the undertaking, then it seems to me  
6 at least that consistent application of the guidelines  
7 across that same geographical area would be important  
8 as well in order to have a useful evaluation of those  
9 guidelines?

10 A. And the Ministry has been very  
11 concerned about consistent application of the  
12 guidelines. The Ministry has been striving to achieve  
13 that.

14 Q. Okay. And so you would agree that  
15 that is an ideal that is worth working toward?

16 A. Well, I would like to modify it a  
17 little bit just to make sure we don't forget the fact  
18 that conditions across Ontario change dramatically and  
19 so consistent application of the guidelines in areas  
20 where the conditions are the same is what I would  
21 advocate, not just simply consistency for the sake of  
22 consistency.

23 Q. No, I am not suggesting consistency  
24 for the sake of consistency. I am suggesting that you  
25 would want to apply the guidelines with the same rigor

1       in all areas within the moose kill area?

2                     A. Well, no, we are going to have to  
3       disagree on that a bit too because the ability of the  
4       land to support moose varies considerably and I think  
5       it's better to apply the guidelines more rigorously in  
6       areas that are inherently more capable of producing  
7       moose than in areas that are inherently less capable of  
8       producing moose.

9                     Q. Well, presumably if you had an area  
10      with a low moose population, if you provided more good  
11      habitat you could increase the numbers in that area?

12                  A. Sometimes you could, but other times  
13      you may not be able to because there is an inherent  
14      ability of the land to support moose and in areas where  
15      the capability to support moose is relatively low, you  
16      could apply those guidelines and not get the result  
17      that you would get somewhere else.

18                  Q. Okay. Well, I think we are going to  
19      come back to that later briefly, I won't belabour it,  
20      but let's look at it from another point of view.

21                  Another reason for providing good moose  
22      habitat and applying the guidelines consistently across  
23      the area of the undertaking is because you are relying  
24      on those guidelines to protect 70 per cent of the  
25      vertebrate species?

1                   A. Yes.

2                   Q. It's not just the moose, you are  
3                  relying on them for the other 70 per cent?

4                   A. Yes, that's right.

5                   Q. And in terms of looking at other  
6                  wildlife objectives, the moose guidelines are the  
7                  cornerstone--

8                   A. Right.

9                   Q. --of that program?

10                  A. Mm-hmm. That's right.

11                  Q. Okay.

12                  A. And that is why we have to do some  
13                  monitoring and have engaged in a monitoring process to  
14                  make -- to check on how well we are doing on that part  
15                  of it because we can meet the needs of those 70 per  
16                  cent without applying the moose guidelines everywhere  
17                  because other species have the same kind of  
18                  relationship with the land as moose do; some areas are  
19                  inherently more capable of producing other species of  
20                  wildlife, some are less capable.

21                  And so there has to be this up and down  
22                  adjustment depending on the ability of the land to  
23                  support the wildlife species present.

24                  Q. Well, there is some uncertainty in  
25                  terms of choosing the 70 per cent figure anyway, you

1 can never be one hundred per cent sure that by  
2 providing habitat through the moose guidelines that you  
3 are protecting all 70 per cent, there is always a  
4 degree of uncertainty?

5 A. That's right, there is a degree of  
6 uncertainty in all of these decisions.

7 Q. Sure.

8 A. The whole process of being a wildlife  
9 biologist is uncertain.

10 Q. And I don't think anyone disagrees  
11 with that, but if you are sacrificing the moose  
12 guidelines in certain areas of the undertaking, then  
13 you are also going to be sacrificing some of the  
14 vertebrates within that 70 per cent figure.

15 You would accept that; wouldn't you?

16 A. No, I wouldn't accept that and I  
17 don't think the word sacrificing is really quite the  
18 correct word to use here.

19 We are constantly faced with competing  
20 demands from people who want things from the forest and  
21 it just is not always feasible to apply those  
22 guidelines rigorously everywhere, it just isn't  
23 possible and still meet the demands of the timber  
24 industry for wood products or other people for other  
25 desires.

1                   Q. Okay. Well, let me just come at it  
2 another way one more time. Would you agree that the  
3 degree of uncertainty with respect to the species that  
4 you are protecting will decrease the more places that  
5 you provide that good habitat?

6                   You are going to reduce your uncertainty  
7 if you apply the guidelines and provide the habitat?

8                   A. Well, I don't think so. Maybe we  
9 could use a particular example.

10                  If you were looking at an area -- a large  
11 area of jack pine growing on a sandy soil - this is  
12 this classic thing that we talk about all the time -  
13 that is not inherently good moose habitat.

14                  At the same time, it's a very specialized  
15 habitat for some of the other vertebrates, most of whom  
16 have adapted to a very clear disturbance forest  
17 situation because that's the evolutionary history of  
18 jack pine.

19                  And so applying the guidelines less  
20 rigorously on those areas should not have any inherent  
21 difficulty with respect to the wildlife species that  
22 are there. And in line with your question then, it  
23 would not, in my view, reduce the uncertainty.

24                  THE CHAIRMAN: Dr. Euler, you are only  
25 applying the guidelines anyways in areas where there is

1 some timber activities; are you not?

2 DR. EULER: Yes, that's true.

3 THE CHAIRMAN: So that there is vast  
4 areas of the province where there are no timber  
5 activities--

6 DR. EULER: Right. Yes, that's a good  
7 point, Mr. Chairman.

8 THE CHAIRMAN: --for which you would  
9 apply none of the guidelines?

10 DR. EULER: That's correct.

11 THE CHAIRMAN: Including the tourism  
12 guidelines, the featured specie guidelines or the fish  
13 guidelines?

14 DR. EULER: That's right.

15 THE CHAIRMAN: They are just left in the  
16 natural state.

17 DR. EULER: Yeah.

18 THE CHAIRMAN: And the 70 per cent of the  
19 vertebrates fend for themselves. Is that effectively  
20 right?

21 DR. EULER: That's correct. Yeah. I  
22 think the area that we harvest each year is on the  
23 order of 7 per cent of the area -- .7 per cent.

24 MS. SEABORN: Mr. Chairman, would this be  
25 an appropriate time for the morning break?

1                   THE CHAIRMAN: Very well.

2                   MS. SEABORN: Thank you.

3                   THE CHAIRMAN: We will take 20 minutes.

4                   Thank you.

5                   ---Recess taken at 10:20 a.m.

6                   ---On resuming at 10:55 a.m.

7                   THE CHAIRMAN: Thank you. Be seated,  
8                   please.

9                   MS. SEABORN: Mr. Chairman, just before I  
10                  continue with my question, is it the Board's intention  
11                  to sit until the normal hour today in light of the  
12                  change of order?

13                  THE CHAIRMAN: Well, that sort of depends  
14                  on where you think you are. Obviously we are going to  
15                  be into next week with this panel, and we were trying  
16                  to accommodate Mr. Hunter specifically because he felt  
17                  he could finish in the one day and may not be  
18                  reattending next week. I understand that you would be.

19                  MS. SEABORN: I will be here, Mr.  
20                  Chairman.

21                  THE CHAIRMAN: And it doesn't pose a  
22                  problem in that regard. How long do you figure you  
23                  still have left?

24                  MS. SEABORN: I can't guarantee I will  
25                  finish today. What I would prefer to do would just be

1       to carry on in the normal course and if I don't finish,  
2       I will take a very short time when we reconvene on  
3       Monday.

4                   And I can't say at this point whether it  
5       is worthwhile for the Board to sit until two just so  
6       that I finish. I wouldn't want the Board to do that  
7       and then me say that I will be back on Monday anyway.

8                   THE CHAIRMAN: Okay. Well, then perhaps  
9       we will sit until the normal time which is normally  
10      about -- well, perhaps we can sit until close to one  
11      and them just break for the day, if that would be  
12      agreeable?

13                  MS. SEABORN: Would you prefer that I  
14       continue, Mr. Chairman, and we not have another break  
15       and then we finish at one, or we can have another short  
16       break and go until 1:30 or so?

17                  THE CHAIRMAN: Okay. Well, why don't we  
18       go for about an hour and a half or so and see where you  
19       are at that point, and if you have got a bit more that  
20       you could fit in, then maybe we will take a short  
21       15-minute break and we'll just go on for another half  
22       hour or so.

23                  We would like to get in as much time as  
24       we can, because obviously this is helpful.

25                  MS. SEABORN: Sure.

1                   THE CHAIRMAN: Mr. Tuer?

2                   MR. TUER: Mr. Chairman, Mr. Freidin

3                   spoke to me during the break about the arrangements for  
4                   next week - and he can speak for himself - but I think  
5                   he will tell you that he is going to have some  
6                   difficulty providing the written statement by Wednesday  
7                   and suggested next Friday with perhaps the -- if it is  
8                   considered that further examination of witnesses arises  
9                   from it, that that could take place perhaps at the  
10                  conclusion of the examination-in-chief--

11                  THE CHAIRMAN: Of Panel 11.

12                  MR. TUER: --of Panel 11. That certainly  
13                  is totally satisfactory to me and sounds sensible.

14                  THE CHAIRMAN: Okay. Any other parties  
15                  object to that arrangement?

16                  (No response)

17                  Very well. We will schedule it then for  
18                  the completion of the examination-in-chief of Panel 11.

19                  MR. FREIDIN: Thank you, Mr. Chairman.  
20                  Thank you, Mr. Tuer.

21                  THE CHAIRMAN: Ms. Seaborn?

22                  MS. SEABORN: Q. Dr. Euler, the moose  
23                  guidelines were released in final form in 1988;  
24                  correct?

25                  DR. EULER: A. Yes, that's correct.

1                   Q. And I believe your evidence has been  
2                   that the guidelines have been around in various forms  
3                   for a number of years?

4                   A. That's right.

5                   Q. And that they have been developed  
6                   over quite a long period of time?

7                   A. That's correct.

8                   Q. Now, in your opinion are the  
9                   guidelines as they now stand based on a sound  
10                  biological rationale?

11                  A. Yes.

12                  Q. And you would include in that the  
13                  provision under the general guidelines with respect to  
14                  the size of clearcuts?

15                  A. Yes.

16                  Q. And if we turn to your paper, which  
17                  is Exhibit 499.

18                  A. And that's: How Does Clearcutting  
19                  Affect Wildlife Management?

20                  Q. Yes. Page 18, Table 1.

21                  A. Page 18, Table 1. Yes?

22                  Q. And you state in the table the size  
23                  of disturbance which produced good moose habitat and a  
24                  number of authors' conclusions on that issue?

25                  A. Mm-hmm, yes.

1                   Q. And the figure that we have in the  
2 general guidelines is consistent with the range that is  
3 found in Table 1 of Exhibit 499?

4                   A. Yes, it is. I believe it is, yes.

5                   Q. Thank you. Is there a biological  
6 basis for the interim direction with respect to two  
7 times the clearcut size?

8                   A. No.

9                   Q. And I think, Dr. Euler, your evidence  
10 in response to some questions from Ms. Swenarchuk was  
11 that you would consider clearcuts over 130 hectares to  
12 be large and those under 130 hectares to be small?

13                  A. Yes. From a wildlife biologist's  
14 point of view when using that word, yes.

15                  Q. Now, when you told us about the  
16 interim reporting direction with respect to the moose  
17 guidelines, you told us that one of the reasons for  
18 having this interim reporting was to reign in the  
19 bounds of flexibility?

20                  A. That's correct.

21                  Q. And if you look at Exhibit 489, which  
22 is the Interim Direction. Do you have that in front of  
23 you?

24                  A. Yes, I do.

25                  Q. Okay. If you look at the third page

1 at the top, I am interested in the statement that:  
2                   "Interim guidance on flexibility is  
3                   necessary for the following reasons:"

4 And one of the reasons that is listed is:

5                   "To develop greater knowledge of the  
6                   relationship between population levels  
7                   and..." population "...change."

8                   A. Habitat change I think it reads; does  
9                   it not?

10                  Q. Oh, I'm sorry, yes. And it also  
11                  indicates in the direction that the way to do that, I  
12                  take it, is through monitoring?

13                  A. Mm-hmm, that's right.

14                  Q. Now, would you agree with me that  
15                  that sort of a relationship could not be effectively  
16                  monitored by reporting deviations for a two-year  
17                  period?

18                  A. Yes, that's right. I would agree  
19                  with you.

20                  Q. And would you agree with me that it  
21                  will make more sense to monitor closely the  
22                  effectiveness of the guidelines as written because  
23                  these are the guidelines that have a sound biological  
24                  basis?

25                  A. Yes, I would agree with you. And

1       that's actually what we are doing, we are initiating  
2       quite a major project to do exactly that.

3                 Q. Now, I don't want to get into the  
4       details again of the formula that's being proposed by  
5       the Minister for deviation reporting because I think we  
6       have been through that.

7                 But irrespective of what formula you  
8       applied, would you agree with me that the reasons that  
9       drove the Ministry to putting forward such a proposal  
10      are valid concerns today, and I am referring to the  
11      reasons at the top of page 3?

12                Let me put it another way. Irrespective  
13      of what the deviation reporting scheme is, it appears  
14      to me that it is the Ministry's position that there are  
15      some problems with respect to the guidelines and that  
16      guidance on flexibility is required and four reasons  
17      have been given?

18                A. I must be very tired because I am not  
19      sure that I followed your logic there in that question.  
20      Would you mind making it just a bit simpler for me,  
21      please?

22                Q. Okay, I will try. The Ministry says  
23      in this document that interim guidance on flexibility  
24      is necessary and certain reasons are listed.

25                A. Yes, okay.

1                   Q. And we have just discussed one of the  
2    reasons is to understand the relationship between  
3    population levels and habitat change?

4                   A. That's right.

5                   Q. And I think another reason we talked  
6    about earlier was your example where you felt that, in  
7    some instances, the guidelines were being applied  
8    inappropriately and you gave the example--

9                   A. Right.

10                  Q. --of a large area being taken out of  
11   timber production because the guidelines were applied  
12   too stringently?

13                  A. Too rote a manner I think we said.

14                  Q. Okay.

15                  A. Right, yes.

16                  Q. Now, all I am driving at is that,  
17   irrespective of what the deviation reporting scheme is,  
18   the problems that you are having with flexibility of  
19   the guidelines are still valid, they still stand?

20                  A. Yes.

21                  Q. They are concerns?

22                  A. Yes, right.

23                  Q. Okay. And presumably you would want  
24   to somehow deal with these concerns?

25                  A. Yes, indeed.

1                   Q. And what I am suggesting is that:  
2     Wouldn't it be better to deal with these concerns by  
3     putting forward a deviation reporting scheme that did  
4     not depend on this new formula in the Interim  
5     Direction, that depended on what is in the guidelines  
6     now?

7                   A. Okay. I have a particular problem  
8     with this because, yes, in my professional opinion  
9     that's correct, and we had a lot of discussions about  
10    the best way to do this in the Ministry, and I advanced  
11    my position and the Ministry took a slightly different  
12    position.

13                  So, in my personal opinion, I agree with  
14    you although after considerable discussion - and in my  
15    opinion was aired very carefully and at all levels -  
16    and the preponderance of opinion was somewhat different  
17    from my own, and that's just a normal part of these  
18    things.

19                  Q. Well, that's helpful, Dr. Euler,  
20    because you are put forward as a wildlife biologist  
21    with expertise in that area, and what I am interested  
22    in is your opinion, given that you have the background  
23    in terms of giving the Board evidence as to the  
24    biological bases for decisions.

25                  A. Mm-hmm.

1                   Q. Okay. Thank you. Dr. Euler, were  
2        you here for the evidence of Panel 8?

3                   A. Part of it I was.

4                   Q. Could you have a look at Volume 71 of  
5        the transcript. Perhaps Ms. Blastorah can provide that  
6        to you.

7                   MR. FREIDIN: Which volume?

8                   MS. SEABORN: Volume 71.

9                   MS. BLASTORAH: (handed)

10                  MS. SEABORN: Q. And could you turn to  
11        page 11988?

12                  MR. FREIDIN: What page?

13                  MS. SEABORN: Page 11988.

14                  Q. Page 11988?

15                  DR. EULER: A. Yes, I have that.

16                  Q. Now, I was asking Mr. Straight in  
17        Panel 8 some questions about the mechanics of reviewing  
18        guidelines?

19                  A. Yes.

20                  Q. And if you look at line 4, I asked  
21        Mr. Straight:

22                  "Q. If your wildlife biologist, for  
23        example, was reviewing a portion of a  
24        timber management plan, would he be able  
25        to tell from reading that plan where an

1                   interdisciplinary team had chosen to use  
2                   their discretion in such a way as to  
3                   deviate from a guideline?

4                   A. The nature of the guidelines,  
5                   and you were referring to the moose  
6                   guidelines?

7                   Q. Just as an example.

8                   A. The nature of those guidelines  
9                   is such that he should be able to review  
10                  the cutting patterns, the cutting maps;  
11                  if you will, the eligible stand and the  
12                  prescriptions that come in and be able  
13                  to generate a reasonable sense by that  
14                  whether or not the guidelines are being  
15                  applied."

16                  Now, would that be your experience, Dr.  
17                  Euler?

18                  A. Yes, it would be.

19                  Q. Thank you. And, Dr. Euler, just one  
20                  more question on this point. When we look at the Moose  
21                  Habitat Guidelines for areas of concern, there is in  
22                  place now through the area of concern planning process  
23                  a procedure by which those decisions are documented;  
24                  correct?

25                  A. Yes.

1                   Q. Okay. And we are going to be  
2         addressing that in Panel 15 I understand from Mr.  
3         Freidin's comments?

4                   A. Well, you best ask Mr. Freidin that  
5         because I am not sure.

6                   MR. FREIDIN: The area of concern  
7         planning process will be addressed in Panel 15, yes.

8                   MS. SEABORN: Thank you.

9                   Q. Mr. Greenwood, I have asked Mr.  
10         Mander to put up your drawing of Oba Lake which is  
11         Exhibit 467?

12                  MR. GREENWOOD: A. Yes, I see it.

13                  Q. Okay. Now, Mr. Edwards asked you  
14         some questions about Oba Lake and I just want to make  
15         it clear that I have a few questions, but I am asking  
16         them in the context of your experience at Oba Lake and  
17         what happened approximately 10 years ago. I don't want  
18         to get into what may or may not have happened since  
19         that time. Okay?

20                  A. Okay.

21                  Q. Now, you were the unit forester for  
22         the Magpie Forest in 1978; is that correct?

23                  A. In actuality in 1978 it was the Franz  
24         Crown Management Unit.

25                  Q. The same area though?

1                   A. Same area. Actually that's not quite  
2 true either, but -- not exactly the same area, but  
3 close enough.

4                   Q. You were there?

5                   A. I was there.

6                   Q. Okay. And Oba Lake, I believe you  
7 said, was one of your prime tourist lakes and it also  
8 had a number of cottages on it?

9                   A. It was a tourist outpost lake with  
10 cottages on it, correct.

11                  Q. Okay. Do you know ten years ago  
12 whether that lake had been surveyed to AHIS standards?

13                  A. I am not sure what AHIS is.

14                  Q. Dr. Allin?

15                  DR. ALLIN: A. Well, AHIS means aquatic  
16 habitat inventory survey program.

17                  Q. Right. Was that program in place in  
18 1978?

19                  A. Yes, it was.

20                  Q. Do you know, Mr. Greenwood, whether  
21 that lake had been surveyed pursuant to that program?  
22 You don't know, or you don't think it had been  
23 surveyed?

24                  MR. GREENWOOD: A. I don't know.

25                  Q. Okay. Now, if there were some

1 tourism lodges on the lake, I would expect that the  
2 fish species would probably be known or there would be  
3 a general idea from local knowledge?

4 A. That's correct.

5 Q. And in your evidence, Mr. Greenwood,  
6 you pointed out that the resolution of peoples'  
7 concerns regarding harvest around Oba Lake was  
8 negotiated prior to the introduction of the fish, moose  
9 and tourism guidelines; correct?

10 A. That's correct.

11 Q. And I think you also said at that  
12 time MNR tended to approach the application of reserves  
13 by designating fixed reserves?

14 A. That I think was the most common  
15 application of reserves throughout the area of the  
16 undertaking. In this particular unit, I don't think  
17 that was the case.

18 Q. That's right. And I think both you  
19 and Mr. Clark indicated that as things stood when you  
20 were there you felt that parties' concerns regarding  
21 harvest around that lake had been largely satisfied?

22 A. That's correct.

23 Q. And, Mr. Clark, I think you said as  
24 well that this was a really good example of a unit  
25 forester knowing his unit, designing his objectives,

1       and then designing a reserve to fit a particular  
2       situation?

3                    MR. CLARK: A. Absolutely.

4                    Q. Okay. Now, Mr. Greenwood, the  
5       skyline reserve that was developed, would you agree  
6       with me that this is essentially the same type of  
7       reserve that is encouraged in the tourism guidelines?

8                    MR. GREENWOOD: A. It is my  
9       understanding that it is one of the potential types of  
10      reserves that can be used.

11                  Q. So this sort of reserve is identified  
12      in the tourism guidelines as being an option?

13                  A. A variable with reserve, yes.

14                  Q. Okay.

15                  A. Just one correction. I wouldn't  
16      classify the reserve that we used as a skyline reserve.  
17      There was one significant portion of that reserve which  
18      did have elevation that we protected in a skyline  
19      fashion, but the total reserve was not a skyline  
20      reserve.

21                  Q. Would calling it a variable reserve  
22      be more appropriate then?

23                  A. That's the term I would use.

24                  Q. Okay. And, Dr. Allin, the reserve  
25      that was put in place around Oba Lake, it would conform

1 to the standards that are now in place today with  
2 respect to the Fish Habitat Guidelines; would it not?

3 DR. ALLIN: A. I'm sorry, I'm not  
4 totally familiar with the nature of the reserve around  
5 Oba Lake. If it was a continuous reserve on all  
6 portions of the shoreline in which timber was eligible  
7 to be harvested, yes, then it would.

8 Q. I think it was something analogous to  
9 say a 100- to 600-foot variable reserve?

10 A. Yes, that would be consistent.

11 Q. And, Dr. Euler, this type of reserve  
12 provides good moose habitat; doesn't it?

13 DR. EULER: A. Yes, in general it does.

14 Q. Now, Mr. Greenwood, would you agree  
15 with me that if you were faced today with exactly the  
16 same concerns at Oba Lake that you had 10 years ago, if  
17 you went to the three provincial guidelines that are  
18 now in place you would be able to provide a solution  
19 for Oba Lake that was in accordance with those  
20 guidelines?

21 MR. GREENWOOD: A. I think I could.

22 Q. And the fact that you had to work  
23 within the bounds of the guidelines would not have  
24 affected your ability to deal with peoples' concerns  
25 and come to an amicable solution?

1                   A. That's a little bit harder question  
2        in that as I have not worked with those guidelines as a  
3        field forester. There may be aspects in there that  
4        would cause some concern.

5                   I'm not saying that with knowledge of  
6        one, it is just that I haven't work with them and,  
7        therefore, I would be somewhat reluctant to say across  
8        the board there would not be concerns or it would have  
9        been as easy. I don't know that.

10                  Q. Mr. Clark, have you had experience  
11        working with the guidelines?

12                  MR. CLARK: A. I can't really say I have  
13        had experience with the final approved version of all  
14        the guidelines. When I was a district manager, I  
15        believe in all cases we were dealing with draft  
16        guidelines. They were, however, essentially the same  
17        as the guidelines that have now been approved.

18                  Q. Well, the solution, Mr. Greenwood,  
19        that was ultimately reached at Oba Lake 10 years ago  
20        would be in conformity with today's guidelines?

21                  MR. GREENWOOD: A. I think so, yes.

22                  Q. Okay. Thank you. Mr. Clark, I just  
23        want to ask you a couple of questions about the tourism  
24        guidelines, which is Exhibit 379. And if you could  
25        turn to page 7 under Section 1.1, A New Policy.

1                   MR. CLARK: A. Yes.

2                   Q. Now, it is my understanding from  
3 looking at these guidelines that what is mandatory  
4 about them is that MNR or the company, depending on the  
5 management unit involved, must collaborate with the  
6 tourism industry?

7                   A. That's correct. It is the process  
8 that's mandatory.

9                   Q. So in a situation like Oba Lake, it  
10 would now be what I would prefer to call normal  
11 practice for collaboration to take place?

12                  A. That's correct.

13                  Q. Okay. Now, I think your evidence has  
14 been to the effect that where collaboration does not  
15 result in a consensus being reached, someone has to  
16 make the ultimate decision?

17                  A. Yes, that's correct.

18                  Q. And that decision rests with MNR?

19                  A. Yes.

20                  Q. And would you agree with me that if  
21 collaboration did not result in the identification of  
22 an area of concern, then the results of that  
23 collaboration would not appear in the timber management  
24 plan?

25                  A. I think that is correct.

1                   I think, on further thought, to the  
2 extent that we identified a value and a preliminary  
3 area of concern, there might be some record of the  
4 issue, if you want, but it wouldn't find expression in  
5 a table dealing with areas of concern because  
6 ultimately it would not reach that status.

7                   Q. That's right. Obviously you have to  
8 reach the status of an area of concern before you make  
9 it into those areas of the plan?

10                  A. That's correct.

11                  Q. Okay. Well then, if you didn't make  
12 it, say, even to the cut of being a preliminary area of  
13 concern, that am I correct in saying that would not  
14 appear in the plan?

15                  A. I think you are correct.

16                  Q. Thank you.

17                  A. The one point I have been reminded of  
18 is that to the extent that there was supplementary  
19 documentation associated with the plan, it could well  
20 be that correspondence associated with that particular  
21 issue would be on record.

22                  Q. Okay.

23                  MR. MARTEL: Would that show up then at  
24 an open house?

25                  MR. CLARK: Yes, it would. Initially in

1       the -- at the early stages, in the first information  
2       centre where a values map was identified, it would  
3       normally -- the value that had been identified would be  
4       on the map, and to the extent that there was additional  
5       documentation concerning that particular value, it  
6       would normally be available at the open house.

7                     MS. SEABORN: Q. Mr. Greenwood, you were  
8       here throughout Mr. Armson's testimony during Panel 9?

9                     MR. GREENWOOD: A. Yes, I was.

10                  Q. And you will no doubt recall that  
11       there was a number of questions asked of Mr. Armson  
12       with respect to the effects of full-tree harvesting?

13                  A. Correct.

14                  Q. And a number of the questions  
15       revolved around the studies that have been provided in  
16       the Panel's 9 and 10 witness statements.

17                  A. Correct.

18                  Q. Could you turn to page 226 of the  
19       Panel 10 evidence which is Exhibit 416A.

20                  A. I have it.

21                  Q. If you just look at the last line on  
22       page 226. And you state in your report:

23                     "When considering full-tree harvest,  
24       conclusions are more tentative but there  
25       is general agreement that given rational

1                   management for the site (e.g. appropriate  
2                   choice of rotation, subsequent  
3                   regeneration) inputs of nutrients will  
4                   balance increased exports in foliage and  
5                   branches."

6                   And then you go on to say that:

7                   "An exception could be sensitive sites or  
8                   those of marginal fertility."

9                   How would you define a sensitive site,  
10                  Mr. Greenwood?

11                  A. Well, I think in earlier evidence it  
12                  was mentioned that both sensitive sites and marginal  
13                  fertility should be in quotes. I was using the  
14                  terminology that was in the literature that I was  
15                  referring to.

16                  So the reference in this line would be  
17                  what Gordon and Timmer were referring to as sensitive  
18                  sites or those of marginal fertility.

19                  Q. So you were relying on their  
20                  definitions when you put that statement in?

21                  A. I was speaking to what they were  
22                  referring to as sensitive sites or those of marginal  
23                  fertility, correct.

24                  Q. Do you yourself, as a forester, see a  
25                  difference between a sensitive site or a site of

1 marginal fertility?

2                   A. I would see a difference between  
3 those two terms in that if you are referring to  
4 sensitive site I would have to ask: Sensitive to what.  
5 If it was sensitive to fertility, then that could  
6 include a site of marginal fertility.

7                   Many of the authors just use the word  
8 sensitive in a broad brush way and when they use it in  
9 that way it causes some confusion as to what you are  
10 referring to, sensitive to what.

11                  Q. Mr. Hynard, would you be able to give  
12 me a definition?

13                  MR. HYNARD: A. Is that sensitive or  
14 fragile or both?

15                  Q. Both.

16                  A. To me a fragile site is a site that  
17 could be easily damaged. In a timber production  
18 perspective, I think of one whose productivity could be  
19 easily damaged or impaired.

20                  I really don't have a sense of the  
21 meaning of the word sensitive in relation to site. The  
22 word sensitive means that it is responsive to or it can  
23 sense or respond to a stimulus, and I really don't have  
24 an understanding of what that term means in terms of  
25 site.

1                   Q. Okay. Mr. Oldford, would you have a  
2 view on what a sensitive site is?

3                   MR. OLDFORD: A. Not really much more to  
4 add than what the other -- what Mr. Greenwood and Mr.  
5 Hynard have said.

6                   And when you think of the word sensitive  
7 and fragile, you might have to also have in mind the  
8 activity that was going to be undertaken with respect  
9 to those areas.

10                  If, for instance, normal logging practice  
11 using narrow tires was to occur on a certain site, then  
12 obviously sensitive has a different meaning than if  
13 wide tires were used, then the site would not be  
14 sensitive.

15                  Q. Okay. Mr. Oldford, your evidence has  
16 been that the large increase in the use of the  
17 full-tree logging method is largely due to economic  
18 considerations including availability of manpower,  
19 changing technology and changing values in the  
20 workplace?

21                  A. Yes. Some of those are key  
22 considerations.

23                  Q. And it was identified in the  
24 evidence, and in Panel 9, that the use of the full-tree  
25 harvest method has increased from 15 per cent to 65 per

1       cent; correct?

2                   A. In Panel 10?

3                   Q. Yes.

4                   A. Yes.

5                   Q. And in your estimation, Mr. Oldford,  
6       for the reasons that you have given, economic  
7       considerations, et cetera, would you expect that the  
8       use of this logging method will continue to increase  
9       in the boreal forest?

10                  A. I expect it will continue probably at  
11       the level that it's at right now. There have been some  
12       new technologies developed and, in some cases, there  
13       may be even a shift back to some mechanized shortwood  
14       harvesting methods and some shortwood harvesting  
15       methods that have options of producing different  
16       lengths of stems, say.

17                  Q. I am a little bit confused by that  
18       statement because I was left with the impression after  
19       your direct testimony that you felt for the variety of  
20       reasons that full-tree harvest was really the way we  
21       were going to go.

22                  A. For Ontario, yes, I believe it will  
23       stay at the 65 per cent range and hover around that  
24       range, yes.

25                  Q. But you are not convinced that it's

1 going to increase -- its use will increase?

2 A. I am not convinced it will change  
3 significantly from what it is say right now.

4 Q. Mm-hmm.

5 A. I have no evidence to that effect.

6 Q. Mr. Greenwood, would you agree with  
7 Mr. Oldford's assessment on the 65 per cent figure  
8 being accurate in the future?

9 MR. GREENWOOD: A. I wouldn't have any  
10 basis to make that judgment.

11 Q. As a forester, would you have an  
12 opinion? You're out in the field.

13 A. As a forester I would -- I tend to  
14 agree with that statement, that there are still some  
15 sites and some conditions which, for various reasons,  
16 the decision would be to harvest it with the  
17 tree-length or shortwood method.

18 Q. Okay.

19 Q. Mr. Hynard, your management unit is  
20 located in the Great Lakes/St. Lawrence Forest;  
21 correct?

22 MR. HYNARD: A. Yes.

23 Q. And would you say the amount of pine  
24 on your unit has increased or decreased over the past  
25 hundred years?

1                   A. Decreased.

2                   Q. Now, in your testimony you used the  
3 term high-grading. Could you define that for me?

4                   A. Yes. High-grading refers to a  
5 logging practice in which the bigger and better trees  
6 are removed and the others -- the other smaller and  
7 poorer trees are left behind.

8                   Q. And does that method also imply that  
9 there isn't a regen treatment associated with it?

10                  A. Yes, it implies that.

11                  Q. And would you agree that the decrease  
12 in pine on the Minden unit is the result of  
13 high-grading?

14                  A. No, no, I wouldn't do that, certainly  
15 not by itself.

16                  Q. What other factors would you take  
17 into account?

18                  A. The great depletions in white pine in  
19 Minden occurred between 1860 and 1900 and they occurred  
20 as a result of tremendous exploitation of that resource  
21 to satisfy a market. The logging was more in the sense  
22 of, all the pine were taken not just the bigger and  
23 better ones, although it's true the associated species  
24 were left.

25                  The reason -- the principal reason that

1 pine was so badly depleted was this logging was  
2 followed by repeated wild fires and the wild fires  
3 destroyed the remaining seed source of white pine and  
4 caused those lands that once grew white pine to convert  
5 mainly to poplar and other hardwood species.

6 Q. Is the practice of high-grading still  
7 common today?

8 A. Well, it's certainly not on my unit.  
9 If we define that as saying removing a merchantable  
10 portion of a stand, those trees which have a marketable  
11 value and leaving behind trees that don't, yes, it  
12 remains common and we gave evidence on the effects of  
13 timber market constraints on implementing the  
14 silvicultural harvest system.

15 Q. But weren't you referring to  
16 selection cutting?

17 A. No, I wasn't.

18 Q. Okay. Now, the clearcut system is  
19 the predominant silvicultural system in the boreal  
20 forest; correct?

21 A. Yes.

22 Q. And would you agree that selection  
23 cutting is not normally used in that forest?

24 A. Yes, I would.

25 Q. Now, when you are modifying

1 operations in a reserve in the boreal forest to take  
2 out specific trees, would you agree with me that you  
3 are not technically employing the selection  
4 silvicultural system?

5 A. Yes, I would.

6 Q. And would you agree with me that in  
7 effect what you are doing is high-grading?

8 A. It could be.

9 Q. Okay. Dr. Allin, do you know when  
10 trees are selected to be cut from reserves around water  
11 bodies what percentage are normally cut?

12 DR. ALLIN: A. I think I would have to  
13 refer you to Mr. Hynard for an answer on that one.

14 Q. Mr. Hynard?

15 MR. HYNARD: A. Oh gosh, I really can't  
16 tell you that answer. I'd have to really find someone  
17 who is using those practices around water bodies to  
18 give you a feel for that.

19 Q. Mr. Greenwood?

20 MR. GREENWOOD: A. Again, I don't have  
21 any experience with that type of harvest around a water  
22 body. I am not even sure that it's that common.

23 Q. There isn't any direction on that  
24 point in the guidelines; is there, that you are aware  
25 of?

1                   A. Not that I'm aware of.

2                   MR. HYNARD: A. I should point out the  
3                   distinction between reserve and the area of concern  
4                   itself. If it's classified as a reserve, then there is  
5                   no cutting within it; however, it could be part of an  
6                   area of concern in which partial cutting is permitted.

7                   Q. That's right.

8                   A. Within the reserve component, no  
9                   trees are removed.

10                  Q. Okay. And if it's a reserve that  
11                  becomes an area of concern, the extent to which there  
12                  is cutting in that area is documented in any event in  
13                  that part of the planning process as modified  
14                  operations?

15                  A. Well, there would be a prescription  
16                  for those modified operations. I'm not just sure of  
17                  what that detail might say.

18                  Q. Well, Mr. Greenwood, that  
19                  prescription within an area of concern would tell you  
20                  how you were going to modify your operations for that  
21                  area of concern in the plan?

22                  MR. GREENWOOD: A. That would be my  
23                  understanding, yes.

24                  Q. Okay. Now, Mr. Hynard, no doubt you  
25                  will recall that there has been some discussion

1       concerning the documentation of rationale for  
2       silvicultural decisions?

3                    MR. HYNARD: A. Yes.

4                    Q. The first discussion appears in the  
5       transcript Volume 78. If you could just have that in  
6       front of you, please. Could you turn to page 13095.

7                    A. Yes, I have that page.

8                    Q. Okay. Let's just go to 13099 first.

9       Do you have that?

10                  A. Yes, I do.

11                  Q. And your evidence was that:

12                  "Very few operations occur on protection  
13       forests simply because the land is  
14       generally unfit for commercial timber  
15       production, but occasionally they do and  
16       they can occur there for several  
17       reasons."

18                  You'll recall that testimony?

19                  A. I recall it. I don't see it here in  
20       front of me.

21                  Q. Okay. Page 10399, beginning at line  
22       18. Oh wait, sorry, 13099. Is that what's confusing  
23       you, is my error?

24                  A. No, it was confusing Cam. I have  
25       that line.

1                   Q. That's because Mr. Clark was  
2 listening to my numbers and figured out they were  
3 wrong. Okay, sorry to mislead you. Let's start again.  
4 Page 13099.

5                   A. Yes, I have line 18.

6                   Q. Okay. Line 18 and your  
7 evidence-in-chief was that:

8                   "Very few operations occur on protection  
9 forests simply because the land is  
10 generally unfit for commercial timber  
11 production, but occasionally they do,  
12 they can occur there for several  
13 reasons."

14                  Correct?

15                  A. Yes.

16                  Q. And one of the reasons that you gave  
17 was inventory error?

18                  A. Yes.

19                  Q. And you would agree with me that  
20 protection forests are managed primarily to exert this  
21 beneficial influence on soils, waters and the overall  
22 landscape?

23                  A. I would change that slightly by  
24 saying that protection forests are not normally managed  
25 for timber production because generally the land is

1       unfit for that use.

2                     Q. Okay. Well, the reason why I use  
3       those words is because those are the words that appear  
4       at page 17 of Exhibit 56 which is the Forest Resources  
5       of Ontario.

6                     A. Yes, I recognize that and I recognize  
7       that quote and I have heard similar objective  
8       statements like that in management plans also.

9                     Q. Okay. And the reason why I also  
10      looked look to that is because Mr. Freidin, on the page  
11      before, when he asked you about a definition for  
12      production forest reserve, read you in the definition  
13      from the Forest Resources from Ontario.

14                    A. Yes.

15                    Q. You recall that?

16                    A. I do.

17                    Q. Okay.

18                    A. I think that that's a generalized  
19      statement. It doesn't necessarily follow that Site  
20      Class 4 is managed for that purpose, that is a  
21      management decision to make. I would agree that's very  
22      common.

23                    Q. Okay. And in any event, your  
24      evidence has been that very few operations occur there  
25      anyway?

1                   A. Yes.

2                   Q. Okay. Now, in terms of the inventory  
3     error issue, that would be a situation where a stand  
4     may be labeled in the FRI as Site Class 4 but it could  
5     be converted to a better site class?

6                   A. I am not sure that you have that  
7     quite correct. It would be a stand labeled as Site  
8     Class 4 on the inventory map--

9                   Q. Right.

10                  A. --which in fact when you went there  
11     you found that the stand was Site Class 3 or better?

12                  Q. Okay, that's fine. Suppose, for  
13     example, you had a situation where on your unit you had  
14     Site Class 4 maple, and that would be protection  
15     forest?

16                  A. Site Class 4 of any species would be  
17     protection forest.

18                  Q. Okay. And suppose you wanted to  
19     convert it to Site Class 2, white pine.

20                  A. Yes.

21                  Q. You could go in and do that; couldn't  
22     you?

23                  A. Yes, in theory. In theory you could.

24                  MS. SEABORN: Okay. And one of the  
25     documents, Mr. Chairman, that is not an exhibit yet -

1       it was filed with the Panel 12 witness statement and it  
2       has been referred to but not given an exhibit number -  
3       is Mr. Hynard's model called a Decision-Making Model  
4       for Forest Managers Using Economic Considerations.

5                   Q. Mr. Hynard is going to be back in  
6       Panel 12 to speak to this model and I am not going to  
7       discuss it now, but I'm wondering if in the interim he  
8       could run his model in such a way as to tell me the  
9       economics of going in and cutting Site Class 4 maple  
10      and then converting it to Site Class 2 white pine as a  
11      hypothetical?

12                  A. Let me give you an example right from  
13      my own management plan then.

14                  Q. Okay.

15                  A. I could do that and settle it right  
16      here.

17                  Q. Sure. That will be helpful.

18                  A. And I will quote a couple of sections  
19      from it. The first section is from the background  
20      information part of the plan, Section 3(i) entitled:  
21      Forest Species in Stands which provides a description  
22      of all of the various working groups on the unit.

23                  And I am turning to the page entitled:  
24      The Protection Forest Working Group, so it's a  
25      description of what is there, and it reads:

1                   "Despite the protectionist tone in its  
2                   name, the protection forest working group  
3                   is nothing more than the aggregate of  
4                   stands of Site Class 4. The protection  
5                   forest is a large working group..."

6                   Oh I will skip that section, we don't  
7                   need all the verbosity.

8                   On the following page it reads:

9                   "The site class ratings are not an  
10                  evaluation of the site itself, but rather  
11                  of the height/age relationship of the  
12                  predominating species. Therefore, a  
13                  shallow site which is rated as Class 4  
14                  for a moisture demanding tree such as  
15                  aspen may rank considerably higher for a  
16                  species which is better adapted to the  
17                  growing conditions, for example, white  
18                  pine."

19                  Is that close to the hypothetical that  
20                  you had in mind?

21                  Q. Sounds pretty good.

22                  A. "In fact, despite the shallowness of  
23                  its soils, much of the protection forest  
24                  which is today aspen and birch did at one  
25                  time support reasonably good pine. The

1                   evidence of charred pine stumps, now one  
2                   or more forest generations old everywhere  
3                   throughout this working group, tell a  
4                   sad tale of depletion and destruction.

5                   Pine was eliminated from these lands by a  
6                   combination of clearcutting followed by  
7                   repeated fire, more of which will be told  
8                   in the history section on page 37."

9                   Q. I think we are maybe getting more--

10                  A. Okay. If I can leave that now and  
11                 turn -- that is a description of the case before us  
12                 which is very similar to the case that you described.

13                  The objectives for that working group are  
14                 stated elsewhere in the plan, on page 272, and those  
15                 objectives are all broken down into --

16                  Q. What I am asking about though is  
17                 specific stand conversion.

18                  A. That's what I am getting to.

19                  Q. Okay. As long as that's where we are  
20                 going, that's fine.

21                  A. That's where we are going. Page 72  
22                 gives a strategy breakdown for -- or at least page 72  
23                 provides a strategy for the protection forest working  
24                 group and how it might contribute towards the  
25                 objectives of the plan. And it reads:

1                    "The protection forest working group..."  
2                    Which I might add in Minden is very, very  
3                    large, it represents 44 per cent of the productive  
4                    forest land on my unit. It's very large.

5                    Q. Protection forest or production  
6                    forest reserve?

7                    A. Protection forest.

8                    Q. Okay.

9                    A. "The protection forest working group  
10                  makes no contribution to the forestry  
11                  objective of the unit. No timber cutting  
12                  nor silvicultural effort has occurred in  
13                  this working group on the unit during the  
14                  recent past. The assumption that Class 4  
15                  sites are too poor for the commercial  
16                  production of timber is largely correct.  
17                  Stands correctly labeled Site Class 4  
18                  may, however, contain pockets of  
19                  Site Class 3 within them such as in the  
20                  more deeply soiled draws and ravines.  
21                  Similarly, although rated Class 4 for  
22                  aspen, the pine component in a protection  
23                  forest stand may produce fine logs and  
24                  the site rate as high as Site Class 2 for  
25                  pine. In most cases, however, the

1                   protection forest offers few profitable  
2                   extraction opportunities other than the  
3                   occasional high-grading of pine saw  
4                   logs."

5                   It goes on to describe how much of the  
6                   present protection forest at one time supported better  
7                   stands and then it reads:

8                   "The return of these lands to production  
9                   would require a massive undertaking of  
10                  land clearing, mechanical and chemical  
11                  site preparation, planting, assessment  
12                  and subsequent release. Since the  
13                  protection forest offers even less  
14                  attractive conversion economics than the  
15                  poplar working group, forest management  
16                  efforts are not prescribed for it."

17                  So in that case -- in that particular  
18                  case it was not considered economically worthwhile to  
19                  put that land back into pine, even though, if it were  
20                  carried out, it would be productive again.

21                  Q. Okay. And in your current timber  
22                  management plan is there any area of protection forest  
23                  that has been allocated for stand conversion?

24                  A. Are you referring to the one that I  
25                  am preparing now?

1                   Q. No, the one that is in place right  
2 now.

3                   A. Yes, I had Chuck Mason check it out.  
4 He phoned for me during the break. During the last  
5 eight years--

6                   Q. Yes.

7                   A. --there has been a total of 50 acres  
8 of protection forest cut on my unit. I don't know the  
9 total area of the cut during that time, but I would  
10 guess it would be in the order of 6- to 8,000 acres.

11                  Q. Okay. And on the basis of what  
12 you've just told me in the plan that you are now  
13 preparing - in the evenings I gather - is there any  
14 amount of land that you anticipate being slated for  
15 stand conversion?

16                  A. For stand conversion or for cutting  
17 within the protection forest working group?

18                  Q. For stand conversion within  
19 protection forest?

20                  A. Well, I can't be absolutely  
21 definitive on that. I have been allocating stands and  
22 a number of the Site Class 3 poplar stands which I have  
23 allocated have had Site Class 4 stands adjacent to them  
24 and I have inspected those adjacent stands just to be  
25 sure that they were correctly classified by the

1 inventory, and I have in fact found several stands  
2 which are labeled Site Class 4.

3 Q. Mm-hmm.

4 A. And which I believe to be Site Class  
5 3 or better and I have allocated for harvest.

6 Q. Okay.

7 A. With that particular -- with those  
8 stands and that particular working group and site type,  
9 there are two options -- there will be two options in  
10 the silvicultural groundrules. One is for clearcutting  
11 and regeneration to poplar and the other is for  
12 conversion to white pine.

13 Q. Okay. Getting back to the example  
14 that I first gave you and you gave me the information  
15 on the plan. The information you gave me, is that from  
16 the plan you are writing now, or --

17 A. No, that is from the old one.

18 Q. That is from the one that is in place  
19 right now?

20 A. Yes.

21 Q. Okay. And your conclusion was that  
22 it would be uneconomic; correct?

23 A. Yes, that was my conclusion.

24 Q. I think that was the bottom line of  
25 what you told us?

1                   A. For my circumstances, yes.

2                   Q. Yes. Okay. Would it still be  
3                   possible for you to take that example and put it  
4                   through your model between now and Panel 12 just so we  
5                   have a number?

6                   A. Yes.

7                   Q. I would be interested in seeing the  
8                   magnitude that you are talking about.

9                   A. Okay. If you give me exactly what it  
10                  is you would like, I will do it for you.

11                  Q. Okay.

12                  MS. SEABORN: Maybe, Mr. Chairman I could  
13                  speak with Mr. Hynard after the panel is over and deal  
14                  with it in that fashion rather than taking up time.

15                  THE CHAIRMAN: Very well.

16                  MS. SEABORN: If that's acceptable to Mr.  
17                  Freidin.

18                  MR. FREIDIN: Yes.

19                  MS. SEABORN: Thank you.

20                  Q. Now, one of the exhibits I filed at  
21                  the outset, Mr. Hynard, was an answer to an undertaking  
22                  that had been given in response to some questions I had  
23                  asked Dr. Osborn back in Panel 3 and you have had an  
24                  opportunity to review that?

25                  MR. HYNARD: A. Yes I have.

1 MS. SEABORN: And, Mr. Chairman, that is  
2 Exhibit 529.

3 Q. Now, could you turn to the second  
4 page of the response. A summary of the undertaking is  
5 contained and it is:

6 "To advise the Board whether a summary  
7 can be provided of all timber management  
8 activities which took place on protection  
9 forest (i.e., Site Class 4) on one --"

10 MR. HYNARD: A. Excuse me, Ms. Seaborn.

11 Q. Sorry?

12 A. I am not up with you yet. You are on  
13 page 2 or on the second page of the response?

14 Q. I thought they were the same, but  
15 page 2. Do you have the four-page exhibit, 529?

16 A. Yes, I do.

17 Q. Okay. Second page you will see there  
18 is -- under the heading: Undertaking?

19 A. Yes, I have that.

20 Q. Have you got that?

21 A. Mm-hmm.

22 Q. Okay. I will start again then.

23 "To advise the Board whether a summary  
24 can be provided of all timber management  
25 activities which took place on protection

1 forest (i.e., Site Class 4) on one  
2 management unit for a one-year period  
3 which will be a representative sample for  
4 purposes of determining the extent to  
5 which those activities were directed  
6 toward changing the existing working  
7 group."

8 Now, if you turn to the last page of the  
9 exhibit under Sample 1, the Cochrane Forest?

10 A. Yes.

11 Q. Now, the figures that we received  
12 tell us that in the Cochrane Forest 4.6 per cent of the  
13 productive forest was labeled as protection forest;  
14 correct?

15 A. I see that figure, yes.

16 Q. And during the year examined 8.4  
17 hectares were harvested, 4.0 hectares are now roads, .5  
18 hectares are now planted with black spruce and 3.9  
19 hectares were classified as natural regeneration for  
20 spruce?

21 A. Yes, I see is that.

22 Q. And the figures are somewhat similar  
23 for the Armstrong Crown Management Unit in order of  
24 magnitude?

25 A. Yes.

1                   Q. And what I am getting at is that we  
2       are talking about very small amounts; would you agree?

3                   A. Yes, yes. And my own unit confirms  
4       that, it's a small amount.

5                   Q. Okay. And the information given on  
6       these management units are representative of the area  
7       of the undertaking?

8                   A. Well, I believe that was part of the  
9       undertaking was to pick units that were representative,  
10      I believe.

11                  Q. Right. Okay. Now, in your evidence,  
12      Mr. Hynard, you told us that it would not be necessary  
13      to document the rationale for making any silvicultural  
14      decision; correct?

15                  A. Yes.

16                  Q. And you included in that operations  
17      in protection forest?

18                  A. Yes.

19                  Q. Given the figures that we have just  
20      looked at, wouldn't you agree with me that if you had  
21      to document the rationale for operating in protection  
22      forest, that wouldn't be a big job?

23                  A. I think my original statement was  
24      that it would not be necessary and these figures  
25      confirm that opinion, that it wouldn't be necessary.

1                   Q. Okay. I'm not asking about whether  
2 or not -- I understand that that's your position and  
3 it's not necessary. What I am asking now is that we  
4 are dealing with a very small geographical area. Would  
5 you not agree with me that it would not be a big job?

6                   A. To document the rationale for the  
7 reason of operating in there?

8                   Q. In protection forest?

9                   A. Yes. Well, in itself that's right,  
10 it would be just another straw on the camel's back.

11                  Q. So it would not be a big job; yes?

12                  A. Not in itself, no.

13                  Q. Okay.

14                  A. Not for those units and those  
15 figures, not at all.

16                  Q. Okay. And in terms of documenting  
17 the rationale for deviation, the other thing we have  
18 heard is that you do not believe it's necessary to  
19 document the rationale for deviating from silvicultural  
20 guides; correct?

21                  A. Yes, yes, for the same reasons and I  
22 guess there is a supplementary reason there and that is  
23 that it's difficult to know exactly when you are  
24 deviating.

25                  Q. Okay. I don't want to get into all

1       of the reasons, I just want to summarize just so I  
2       understand your position.

3                   A. Yes.

4                   Q. Now, when we are talking about  
5       documenting the rationale in a timber management plan,  
6       this occurs within the area of concern planning  
7       process; correct?

8                   A. Yes.

9                   Q. And areas of concern are non-timber  
10      values; correct?

11                  A. Yes. There is another forest use or  
12      value identified as a concern there.

13                  Q. So any documentation of rationale for  
14      operations would relate solely to non-timber values?

15                  A. Yes, it would.

16                  Q. Now, I am not sure about your  
17      management unit, but we have heard evidence earlier, I  
18      believe from Mr. Armson, that as a general rule areas  
19      of concern make up a small geographical area of most  
20      management units?

21                  A. Well, that's certainly not true of my  
22      unit.

23                  Q. No.

24                  A. They make up 83 per cent of the  
25      stands that are allocated for harvest during the last

1 planning period.

2 Q. Right. And would you agree that your  
3 unit is somewhat of an anomaly given the area of the  
4 province that it's located in?

5 A. Given Mr. Armson's evidence, yes.  
6 And, yes, that's possibly true.

7 Q. Okay. We have also heard quite a bit  
8 of testimony about a concept of a rulebook. Just so I  
9 am clear, when you spoke of a rulebook with Mr.  
10 Freidin, you didn't have a specific document in mind;  
11 did you?

12 A. No, I didn't.

13 Q. And no rulebook for making  
14 silvicultural prescriptions now exists; does it?

15 A. No, it doesn't.

16 Q. And it appears clear to me it's MNR's  
17 position that one should not be written?

18 A. That's right.

19 Q. Okay. And today, on your management  
20 unit, you are not hampered in any way in making  
21 silvicultural decisions because you have this rulebook  
22 that you have to follow?

23 A. That's right.

24 Q. And I think you've also said that you  
25 don't believe that a forester should be restricted by

1       using, for example, the Spruce Guide book as a  
2       rulebook; it's a tool, not a rulebook?

3                     A. That's right.

4                     Q. Okay. Now, wouldn't you agree with  
5       me that forest management is not without rules, or what  
6       I would prefer to call normal practices. Let me give  
7       you just a couple of examples. You do not normally  
8       selection cut black spruce; correct?

9                     A. Correct.

10                  Q. You would not normally plant poplar  
11       on a jack pine sand flat?

12                  A. That's true.

13                  Q. And for a forester not doing these  
14       things would just be good practice, good common sense?

15                  A. Yes.

16                  Q. Now, the Spruce Guide, which is  
17       Exhibit 382, contains the current timber management  
18       practices for spruce; correct?

19                  A. Yes.

20                  Q. Okay. And would it be fair to say  
21       that applying prescriptions as set out in that guide  
22       constitutes normal practice for a forester dealing with  
23       spruce?

24                  A. I think the guide describes normal  
25       practices, practices which are normally found across

1                   Ontario.

2                   Q. And you would hope that a unit  
3 forester dealing with spruce would interpret -- would  
4 operate within the bounds of the guide in the sense  
5 that that would be his normal practice?

6                   A. It may not necessarily be. You know,  
7 I do deviate myself from the silvicultural guides. I  
8 can't say that all of my silvicultural practices are  
9 described in silvicultural guides, in fact I can tell  
10 you that they're not.

11                  Q. And where are they derived from, your  
12 own personal experience?

13                  A. Yes, my prescriptions for my unit  
14 based on my knowledge of the area in forestry and past  
15 results under similar conditions.

16                  Q. Okay. Now, we heard in Panel 8 that  
17 the use of the silvicultural guides is considered  
18 mandatory by MNR and that these guides are used to  
19 develop the groundrules in a timber management plan;  
20 correct?

21                  A. That's right.

22                  Q. And I think there was evidence to the  
23 effect that it's MNR's position that environmental  
24 protection is inherent in these groundrules?

25                  A. Yes.

1                   Q. And the prescriptions that are laid  
2       out in the groundrules are those that would be employed  
3       in normal operating areas?

4                   A. Yes.

5                   Q. Could you just turn to page 146 of  
6       the Class Environmental Assessment. Do you have that  
7       in front of you, Mr. Hynard?

8                   A. Yes, I do.

9                   Q. And at page 146, if you can look down  
10      to line 26?

11                  A. Yes.

12                  Q. Now, it says:

13                  "Implementation of any of the practices  
14       described in the silvicultural  
15       groundrules is expected to result in  
16       minimal and acceptable environmental  
17       effects because no particular resource  
18       features, land uses or values which could  
19       be negatively affected have been  
20       identified in the land area to which they  
21       apply."

22                  A. I see that statement.

23                  Q. Now, in that statement, aren't you  
24       really saying that because you have identified your  
25       areas of concern and taken those out of the land base,

1       that is the reason why environmental protection is  
2       inherent in the groundrules?

3           A. Your question is: Is that the reason  
4       why environmental protection is inherent? No, I don't  
5       think that's the only reason.

6           Q. Okay. Would you agree with me that's  
7       one of the reasons that's given here as to why  
8       environmental protection is inherent in the groundrules  
9       because you have already taken out other non-timber  
10      values and put them in your areas of concern?

11          A. Yes, that's certainly one of the  
12      reasons.

13          Q. Okay.

14          A. And I think I gave the other reason  
15      yesterday in a kind of a summary of what our evidence  
16      is on effects.

17          Q. Okay. Do you want to -- I am not  
18      quite sure what you are referring to, so if you can do  
19      it briefly.

20          A. Yes, I will. The statement that the  
21      effects aren't significant because those effects are no  
22      greater than would occur in the natural environment  
23      taking into account natural disturbances and their  
24      frequency, intensity, duration and extent.

25          Q. So it's the natural disturbance

1 benchmark that you are also relying on?

2 A. It's the benchmark. That's right.

3 Q. Okay.

4 THE CHAIRMAN: Ms. Seaborn, I am  
5 wondering if this might be a convenient time to take a  
6 short break and come back until about one o'clock?

7 MS. SEABORN: In fact, Mr. Chairman, if  
8 we take a break now, I can assure you I will be  
9 finished before one.

10 THE CHAIRMAN: Okay.

11 MS. SEABORN: Thank you.

12 THE CHAIRMAN: We will break for 10  
13 minutes.

14 ---Recess taken at 12:05 p.m.

15 ---On resuming at 12:25 p.m.

16 THE CHAIRMAN: Thank you. Be seated.

17 MS. SEABORN: Q. Mr. Hynard, could you  
18 have a look at Exhibit 527 which is the interrogatory  
19 package that I filed this morning. Do you have that  
20 wioth you?

21 MR. HYNARD: A. I do. Oh, no, I don't.

22 Q. And if you could have a look at  
23 Question 5 which is the second page. And our question  
24 is somewhat long, but I think the crux of it is the  
25 last sentence on Question 5 where it states:

1                   "At what point in the timber management  
2                   planning process is the logging system  
3                   specified and where specifically in the  
4                   timber management planning manual is this  
5                   set out?"

6                   And the answer that's given is that:

7                   "The logging method is specified at Step  
8                   2 of the management planning process as  
9                   set out on page 109 of the Class EA  
10                  document."

11                  And then the reference is given for the  
12                  timber management planning manual.

13                  Now, if you turn to page 150 of the EA, I  
14                  just want to be clear that I understand this. Now, the  
15                  Step 2 that's referred to in the response, that would  
16                  be where it says:

17                  "Selection of silvicultural systems and  
18                  determination of silvicultural  
19                  groundrules."?

20                  A. That's right.

21                  Q. Okay. Now, could you also turn now  
22                  to Exhibit 512 and that was the excerpt from the Red  
23                  Lake Crown Management Unit Plan. Do you have that in  
24                  front of you?

25                  A. No.

1                   Q. That was the excerpt with the Table  
2       4.11.2, Silvicultural Groundrules for Normal  
3       Operations.

4                   A. I have Table 4.11.1 from the Red Lake  
5       Plan.

6                   Q. Okay. Now, Mr. Hanna asked you some  
7       questions --

8                   THE CHAIRMAN: Is it .1 or .2. We have  
9       .2 and .3, tables --

10                  MS. SEABORN: That's the one I have, Mr.  
11       Chairman.

12                  Q. Could you look at 2 and 3, that's the  
13       excerpt that we have

14                  MR. HYNARD: A. Oh sorry. Sure, .2 and  
15       .3.

16                  MR. FREIDIN: I think, just for the  
17       record, Mr. Chairman, that those are just -- the last  
18       .2, .3, you know go on, .4, .5 was Mr. Multimaki's way  
19       of indicating what the page number of Table 4.11 is.

20                  It's just Table 4.11 and the last -- the  
21       .2, the .2, the .4 are just the page numbers of that  
22       table.

23                  THE CHAIRMAN: Okay.

24                  MR. HYNARD: I think I'm at the one where  
25       you are now.

1 MS. SEABORN: Q. Okay. The second page  
2 of Table 4.11?

3 A. Yes.

4 Q. Okay. Now, Mr. Hanna asked you some  
5 questions about the number of combinations that were  
6 available to the forester at this stage of the planning  
7 process. Do you recall that?

8 A. I certainly do. I was thinking  
9 afterwards if he had asked for the permutations, we  
10 could have even got a larger number.

11 Q. Okay. Now, what I was unclear about  
12 is that in the interrogatory response I was directed to  
13 the planning process at Stage 2 and then I had a look  
14 at the silvicultural groundrules.

15 And it appears to me that at the stage of  
16 identifying silvicultural groundrules in terms of  
17 choice of logging system, a choice still exists; is  
18 that correct?

19 A. I see two options on that page.

20 Q. Right. And if we go to the next page  
21 under Method of Harvest, we have all three options  
22 listed?

23 A. Three options there, yes, yes. And I  
24 said to Mr. Hanna that I presumed that presumed that  
25 all three options were acceptable.

1                   Q. Okay. So at that point in the  
2 planning process, if someone was reviewing the  
3 groundrules they still would not know exactly what  
4 logging system was going to be employed?

5                   A. That's right, they wouldn't know.  
6 Any one of those three could be acceptable.

7                   Q. Okay. And would that -- the final  
8 decision for that logging system, would that be  
9 determined in the annual work schedule -- annual work  
10 plan?

11                  A. I don't believe that the method of  
12 harvest would appear in the annual work schedule.  
13 That's not my recollection anyway. That would be left  
14 to the company and they could employ any one of those  
15 three acceptable options shown on that page.

16                  Q. So in terms of the logging system and  
17 the option, it may not be determined which system they  
18 want to employ until they actually go out into the  
19 field?

20                  A. That's right, and that's because all  
21 three are acceptable.

22                  Q. Okay. Mr. Hynard, are you familiar  
23 with the concept of allocating harvest on the basis of  
24 the prime sites approach?

25                  A. Yes, I am familiar with the concept.

1                   Q. Okay. And is this a concept that you  
2       would take into account when you are allocating stands  
3       for harvest within your management unit?

4                   A. In Minden did you mean?

5                   Q. Yes.

6                   A. Well, the concept of using prime  
7       sites within stand allocations mean that where choices  
8       exist between stands that are eligible for harvest,  
9       that a preference would be given to allocating one  
10      which was on a prime site, the purpose of which is to  
11      expend your silvicultural funds and get your timber  
12      growing on those sites first rather than cut the  
13      non-prime sites and expend your efforts there first.

14                  Q. And this is --

15                  MR. FREIDIN: I think he wanted to finish  
16      the answer.

17                  MS. SEABORN: I'm sorry.

18                  Q. Go ahead.

19                  MR. HYNARD: A. Yeah, I didn't really  
20      answer your question yet and I have been buying time  
21      here trying to think: Well, how does that fit.

22                  I used those principles but I will -- I  
23      cannot today articulate exactly how I will use that  
24      principle in allocating stands because on my unit I  
25      have so many balls in the air and that's only one in

1       the choice of allocating stands.

2                   Q. Mr. Greenwood, is it your  
3       understanding that the Ministry is moving away from the  
4       philosophy of oldest first to the prime sites approach?

5                   MR. GREENWOOD: A. I don't know that the  
6       two are comparable. The prime site, as Mr. Hynard  
7       said, is directing your investments to obtain the best  
8       return on your investments.

9                   The oldest first principle is related to  
10      the process of allowable depletion and where you should  
11      be taking that depletion from. I think they are two  
12      separate concepts.

13                  Q. Okay.

14                  A. The two could come together when you  
15      are allocating, but you would be weighing them as two  
16      separate factors when you are making your allocation.

17                  Q. I don't want to spend a lot of time  
18      on this because this concept was brought up in earlier  
19      panels, but where it comes from is from the Forest  
20      Resources of Ontario which is Exhibit 56 and if you  
21      look at page 3 of that, Mr. Greenwood. Do you have  
22      that?

23                  A. No, I don't.

24                  MS. BLASTORAH: (handed).

25                  MR. GREENWOOD: Which page, please?

1 MS. SEABORN: Q. Page 3.

2 M R. GREENWOOD: A. I have it.

3 Q. The second full paragraph.

4 A. Yes.

5 Q. "This strategy will enable the  
6 Ministry to establish the new man-made  
7 forest which the forest industry will  
8 depend on in the future, however, moving  
9 to a prime sites approach will also mean  
10 modifying harvesting practices. In the  
11 past, the harvesting strategy has been to  
12 cut the oldest and often over-mature  
13 stands first so that the maximum amount  
14 of wood could be harvested from the old  
15 naturally created forest."

16 And then the last sentence says:

17 "As a result, the Ministry and the  
18 companies will be modifying their  
19 harvesting strategies to permit  
20 harvesting of younger stands on prime  
21 sites, thus facilitating the prime sites  
22 regeneration strategy."

23 And what I'm trying to get a sense of,  
24 Mr. Greenwood, is: How is that philosophy taken into  
25 account when say you or Mr. Hynard as a forester are

1       allocating your stands for harvest?

2                   A. Sure. I think the answer is right in  
3       that paragraph actually. The sentence that continues  
4       from where you left off at the top:

5                   "The Ministry has recognized that there  
6       are costs to this harvesting strategy and  
7       the costs that they relate to is a  
8       road-building cost particularly."

9                   Q. Right.

10                  A. And, therefore, when you are  
11       determining a prime site, one of the factors that you  
12       would weigh in terms of this return on investment is  
13       the cost of road building.

14                  So if the oldest first principle  
15       suggested that you should be allocating a stand which  
16       is 30 miles from the end of your nearest road, prime  
17       site might suggest -- because that stand is strictly  
18       old, the prime site strategy might suggest that there  
19       is a stand which, in terms of return on investment, is  
20       closer to the end of that road and, therefore, it  
21       should be harvested because in terms of overall return  
22       it gives the greatest rate of return.

23                  So there are the two separate principles  
24       and this paragraph states that harvesting oldest first  
25       was so that the maximum amount of wood could be

1 harvested and that is what I was suggesting was a  
2 separate principle. When you overlay the cost factor,  
3 then the two come together in an allocation.

4 MR. HYNARD: A. And these two separate  
5 principles can be in conflict.

6 Just to put two balls in the air: If we  
7 have a forest predominated by old that's in a decadent  
8 state and yet the market demand is such that you are  
9 cutting much below your maximum allowable depletion, if  
10 you confine your cutting to the old decadent timber,  
11 you will always -- it's like taking -- Dr. Baskerville  
12 said, taking the rotten apples out of the barrel, you  
13 will always be eating rotten apples because they are  
14 rotting at a rate faster than you are taking them out.

15 And so if you were in that circumstance  
16 it might not be a very wise strategy. You may prefer  
17 to -- you are certainly going to consider that, but you  
18 are considering this prime site approach as it's  
19 articulated here to and there may be lots of other  
20 balls in the air too.

21 So these are all factors.

22 Q. Okay. And that's useful. I think  
23 we'll probably come back to that issue in terms of  
24 regeneration in Panel 11.

25 I just have a few more questions for Mr.

1       Clark. Mr. Clark, I think in your evidence you said  
2       that the tourism guidelines can be distinguished from  
3       the Fish and Moose Habitat Guidelines in terms of any  
4       system of deviation recording?

5                    MR. CLARK: A. Yes, I think I did. I  
6       said there really wasn't a system of deviation  
7       reporting.

8                    Q. And one of the main differences is  
9       that what is mandatory about the tourism guidelines is  
10      this collaboration issue that we talked about earlier  
11      today?

12                  A. That's correct.

13                  Q. And I think in your evidence you  
14      pointed to the Oba Lake example that Mr. Greenwood  
15      described for us as an example of where a deviation  
16      reporting would be difficult?

17                  A. Well, yes, I think- that is correct,  
18      yes.

19                  Q. Okay. And at the same time I think  
20      we've looked at Oba Lake as being a perfect example of  
21      successful collaboration?

22                  A. I would call it a good example.

23                  Q. That's fair. Now suppose, Mr. Clark,  
24      in Oba Lake you had come to the same solution that Mr.  
25      Greenwood was able to arrive at, but one of the parties

1                   involved in that solution was not happy.

2                   Can we just assume that for the moment?

3                   A. Yes.

4                   Q. Okay. And so what you would have is  
5                   a situation where you had applied a solution that was  
6                   in accordance with the guidelines, but you still have  
7                   someone who is unhappy. Do you agree with that?

8                   A. Yes, that can happen.

9                   Q. Okay. Now, one of the options for  
10                  that unhappy party would be to request for a bump-up?

11                  A. That's correct.

12                  Q. Now, would you agree with me that my  
13                  client, the Minister of the Environment, would want to  
14                  know about this sort of situation?

15                  A. Yes.

16                  MS. SEABORN: Thank you, gentlemen.

17                  Those are all my questions, Mr. Chairman.

18                  THE CHAIRMAN: Thank you, Ms. Seaborn.

19                  Very well, ladies and gentlemen, we will  
20                  adjourn for the weekend and return for Monday at 1:00  
21                  p.m.

22                  ---Whereupon the hearing adjourned at 12:38 p.m., to be  
23                  reconvened on Monday, May 1st, 1989, commencing at  
                      1:00 p.m.

24

25







